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Florida.

Acts of the Legislative
Council of the Territory of
Florida

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ACTS

OF THE

LEGISLATIVE COUNCIL

OF THE

Territory of Florida:

Passed at their Second Session

1833:

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Florida State University.



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A C T S

OF THE

Legislative Council.

AN ACT,

To provide for the permanent establishment of the county seats in the counties of Jackson, Duval, and Gadsden, in the Territory of Florida.

Be it enacted by the Governor and Legislative Council of the Territory of Florida, That it shall be the duty of the county courts of the counties of Jackson, Duval and Gadsden, at the first term of said courts, any three of the justices of the peace of said courts being present and concurring therein, to appoint within their counties respectively, three discreet and impartial persons, whose duty it shall be under the commission of said courts, to examine and select the most convenient and eligible situation for the permanent seat of justice for the said counties respectively.

Commissioners to
be appointed

SEC. 2. *Be it further enacted,* That the decision of the said commissioners or any two of them, shall be final, and the situation thus selected shall thenceforth constitute the seat of justice for said Counties respectively until otherwise provided by law.

Their decision fi-
nal

Compensation

SEC. 3. *Be it further enacted*, That the said commissioners shall be entitled to receive such compensation for their services as may be directed by the said courts respectively.

To make written report

SEC. 4. *Be it further enacted*, That the said commissioners shall make a report in writing of all their proceedings by virtue of this act to the said county courts, at such times and places as the said courts may respectively direct.

To take an oath

SEC. 5. *Be it further enacted*, That the said commissioners previous to entering on the duties of their office shall take an oath to perform the duties of their office without partiality favor or affection.

GEO. MURRAY,

President of the Legislative Council.

Attested,
F. J. FATIO, Clerk,

(Approved June 11th 1823,)

WM. P. DUVAL,

Governor of the Territory of Florida.

AN ACT,

To establish boards of health in the Cities of St. Augustine and Pensacola.

Power to pass quarantine laws

Be it enacted by the Governor and Legislative Council of the Territory of Florida, That there shall be established in the cities of St. Augustine and Pensacola, Boards of Health, which shall be and hereby are erected into bodies corporate, by the name and title of the "Board of Health" of St. Augustine, and of the "Board of Health" of Pensacola, and the boards of health thus established shall have full power to pass all quarantine laws, and to make such regulations for the preservation of the health of their respective cities as may seem to them good and proper.

To consist of Aldermen and a resident physician

SEC. 2. *Be it further enacted*, That the boards of health established by this act, shall each consist of the Aldermen of the Cities of St. Augustine and Pensacola, and a resident Physician, to be appointed annually by the Mayor and Aldermen, on the first day of May.—The Resident Physician shall be ex-officio President of the board of health.

SEC. 3. *Be it further enacted*, That so much of an act "to provide against the introduction of contagious diseases, and for the establishment of boards of health in the cities of St. Augustine and Pensacola, be and the same is hereby repealed.

Part of an act repealed

SEC. 4. *Be it further enacted*, That any four members of the corporation of the cities aforesaid, shall constitute a quorum during the months of July, August, September, October and November, in each and every year.

Four members to be a quorum

GEO. MURRAY,

President of the Legislative Council

Attested,

F. J. FATIO, Clerk.

Rejected by the Governor and passed by the requisite majority of the Council.

AN ACT,

To prevent stone Horses and Asses from running at large in the Territory of Florida.

Be it enacted by the Governor and Legislative Council of the Territory of Florida, That from and after the fifteenth day of December, one thousand eight hundred and twenty three, it shall not be lawful for any stone horse or ass to run at large within the Territory of Florida, and if any stone horse or ass shall be found running at large, it shall and may be lawful for any person to take up the same, and having taken him before the next justice of the peace for the county, by the permission of the said justice, may geld the same, taking care that the operation be performed by a person usually doing such business, for which the person so gelding shall receive five dollars, to be paid by the owner of the horse. *Provided nevertheless*, That if any person shall take up and geld any such stone horse or ass contrary to the true meaning and intent of this act, or without fully pursuing the aforementioned directions, he shall for every such offence forfeit to the party injured double the value of such horse or ass, which value shall be ascertained by two respectable freeholders who were acquainted with such horse, and who shall act upon oath; to be recovered before any court having cognizance of the same.

Lawful to take up and geld them

Proviso

Taken up, not
choosing to geld
may advertise

SEC. 2. *Be it further enacted*, That any person who shall take up any stone horse or ass, and does not choose to geld him, may take him before any Justice of the peace for the county, and shall cause the said horse or ass with his brands and marks if he has any, and if not with a description of him to be advertised in not less than three of the most public places of the county, and the person taking up the said horse or ass shall recover from the owner thereof, before any justice of the peace the sum of five dollars, and all reasonable expences, of keeping such horse or ass.

GEO. MURRAY,
President of the Legislative Council.

Attested,
F. J. FATIO, Clerk,

(Approved 11th June 1823.)

WM. P. DUVAL,
Governor of the Territory of Florida.

AN ACT,

For regulating fences in the Territory of Florida.

All fences to be
five feet high.

Be it enacted by the Governor and Legislative Council of the Territory of Florida, That from and after the first day of May one thousand eight hundred and twenty four, all fences or enclosures commonly called worm-log, or post and railing fences that shall be erected and made around, or about any garden, orchard, plantation, or settlement, in this territory, shall be five feet high, when staked and ridged, and from the ground to the height of three feet, of every such fence or enclosure, the rails or logs thereof, shall not be more than four inches distant from each other, and that all fences or enclosures that shall consist of paling, shall likewise be five feet high from the ground, and the pales thereof not more than two inches asunder, *Provided*, that when any fence or enclosure shall be made with a trench or ditch, the same shall be four feet wide, and in that case the fence shall be five feet high, from the bottom of the ditch, and three feet high from the top of the bank.

If ditched

SEC. 2. *Be it further enacted*, That if any trespass or damage shall be committed on any garden, orchard, plantation or settlement, not being fenced or enclosed in

manner as hereinbefore is directed, by the irruption, breaking in or straying of any cattle, horses, sheep, goats or swine, the owner of such cattle, horses, sheep, goats or swine, shall not be liable to answer for such trespass or to make good or satisfy any damage or injury that shall happen or be committed by reason thereof and in case any person shall kill, maim, hurt or destroy, or cause to be killed maimed hurt or destroyed any cattle, horses, sheep, hogs, goats or swine so trespassing and straying or breaking into any garden, orchard, plantation or settlement not fenced and enclosed in manner as by this act is directed, all and every such person and persons shall answer and make good to the owner or owners thereof all such injury and damages as he or they shall sustain thereby, the same to be recovered on due proof thereof before any court having competent jurisdiction.

Trespass on land
not legally fenced

SEC. 3. *Be it also enacted, That no planter or other* person not having a lawful fence, shall fix or cause to be fixed in any of his enclosures any canes or stakes or any thing that shall or may kill, maim hurt or destroy any cattle, horses, sheep, goats, or swine; under the penalty of ten dollars for every such offence, to be recovered before any justice of the peace upon confession of such offender, or proof by one or more credible witness or witnesses, upon oath, one half of the penalty thereof to go to the informer, and the other to the county.

No canes or
stakes to be fixed
on lands without
lawful fence.

SEC. 4. *Be it also enacted, That in all trials to be had* by virtue of this act, the right of the party to the land on which the trespass or damage shall be said to be done, shall not be brought into question, but the same shall be taken for granted to all intents and purposes whatsoever.

Title to land not
to be questioned.

GEO. MURRAY,

President of the Legislative Council.

Attested,

F. J. FATIO, Clerk.

(Approved 11th June 1823.)

WM. P. DUVAL.

Governor of the Territory of Florida

AN ACT,

To regulate the Counties and establish County Courts in the Territory of Florida.

Be it enacted, by the Governor and Legislative Council of the Territory of Florida, That the Territory aforesaid shall be divided into five Counties in the manner following, to wit: All that part of the Territory West of the Chocktahacha (Choctawhatchie) river, shall constitute the County of Escambia, all that part of the Territory East of the Chocktahacha, (Choctawhachy) and West of the Apalachicola river, shall constitute the County of Jackson. All that part of the Territory East of Apalachicola and West of the Suwanee and Alapaha rivers shall constitute a County to be called Gadsden, and that all that part of Florida lying North of the river St. Johns, and North of a line commencing at the mouth of Black Creek on said river and extending up said Creek to where its head waters interlock with the Waters of Alligator Creek, thence in a direct line to the most Eastern waters of said Creek thence down said Creek to its junction with the Santa fe river, thence down said river to its confluence with the Suwanee river, thence northwardly along the margin of said river to the mouth of the Alapaha thence up said river to the point where it intersects the northern boundary line of said Territory to be called Duval, and all the remaining portion of Florida shall constitute a County to be called St. Johns.—

SEC. 2. *Be it further enacted,* That there shall be organized in each of the said Counties thus established, a Court to be called the County Court, and be composed of one Judge each, to be appointed by the Governor and Legislative Council, and hold his office during good behavior subject however to be removed by the Governor and Legislative Council or a majority thereof and who before he enters on the duties of his office shall take an oath to support the Constitution of the United States, and faithfully to execute the duties assigned him without partiality favor or affection.

SEC. 3. *Be it further enacted,* That the County Courts thus established shall, within their respective Counties, exercise jurisdiction over all sums above twenty and under one hundred dollars, and appellate jurisdiction over all sums under one hundred dollars, and concurrent jurisdiction in all criminal cases not capital, and in all civil cases above a hundred dollars with the

Boundaries of
Escambia county

Jackson.

Gadsden.

Duval.

St. Johns.

County courts
how organized.

Oath of Judge.

Their jurisdiction.

Superior Court both in law and equity, saving to all persons the right of appeal or writ of error to the Superior Court.

SEC. 4. *Be it further enacted*, That if either party may desire to appeal from the judgment of the County Court, he may file his Bill of exceptions to the opinion of said Court, praying that it may be signed, sealed, and made a part of the record, and it shall be the duty of the Judge to inspect the said Bill, and if it contain the evidence or point decided correctly and precisely, he shall sign, seal, and certify the same to the Superior Court of the district in which the cause originated.

Appeal to Superior Court.

SEC. 5. *Be it further enacted*, That should the party neglect to take an appeal he may at any time thereafter before the final Execution of the Judgement secure a Copy of the record and if there be any error in the proceedings, he may assign said error and present it to the Judge of the Superior Court either in term time or vacation, and should the said Judge be of opinion that injustice has been done or that there was error in the proceedings, he may award a writ of error to the County Court in which the judgement was rendered which shall be a Supersedeas and shall suspend further proceedings, under the said Judgment or execution until the matters thereof shall be heard in the said Superior Court, the writ of error thus awarded shall be issued by the Clerk of said Court, and its operation as a Supersedeas shall be obeyed by the Clerk, and Sheriff of the County Courts, respectively upon notice thereof.

Remedy for party neglecting to appeal.

SEC. 6. *Be it further enacted*, That the Superior Courts shall have power to award a Certiorari Mandamus, or prohibition, which shall be obeyed by the county courts respectively.

Superior Court may award Certiorari.

SEC. 7. *Be it further enacted*, That the county courts hereby established, shall be the courts of probate within their several counties.

To be Courts of Probate.

SEC. 8. *Be it further enacted*, That the said Courts shall have and exercise jurisdiction over the police of their respective counties, that the three first days of each term, or so much thereof as may be necessary, shall be appropriated to the business of the county, and when sitting for this purpose the justices of the peace within said county or any three of them shall be associated with the judge of the County Court.

To have jurisdiction over the police of Counties.

SEC. 9. *Be it further enacted*, That the said courts and justices shall and may take cognizance of all matters relating to the opening and keeping in repair of

To have cognizance of matters relating to roads

Writs ad quod
dammum

The poor

Power to levy
taxes

To appoint jail-
ors and const-
bles

All the justices
of the county to
attend the first
session annually

Clerk to be ap-
pointed

To give security

Clerks and Sher-
iffs term of office

roads within their respective counties, appointing overseers and surveyors of said roads, establishing ferries, erecting and keeping in repair bridges and causeways, and granting writs of ad quod damnum for the erecting of mills and other water works, and for the maintenance and support of the poor and infirm of their counties. The said courts with a majority of all the justices of the county present, and concurring therein, shall have power to levy and collect a poll or other tax for the erection or repairs of the necessary public buildings of their respective counties, such as a court house jail and clerks office, building bridges where necessary and proper, and for such other purposes as may be designated by law. The said courts and justices or any three of them, shall have power to appoint a jailor and as many constables for their respective counties as they shall deem necessary, and the business and interests of the said county may require. In opening and repairing roads, personal service alone shall be required, or a commutation in lieu thereof at the election of the person whose services are required, not to exceed one dollar per diem.

SEC. 10. *Be it further enacted*, That it shall be the duty of all the justices of the peace of the counties to attend punctually at the first term of their respective county courts of every year for the purpose of making county levies if necessary and attending to the general interest of the county under the penalty of ten dollars, to be recovered before any justice of the peace by warrant, one half to the informer and half to be appropriated to the use of the county.

SEC. 11. *Be it further enacted*, That there shall be appointed in each county a well qualified clerk, whose duty it shall be to record all decrees, orders, judgments and other papers, required by law, and to preserve all papers appertaining to suits in said courts, and who shall take an oath faithfully to perform the duties which have or may hereafter be assigned him, and execute bond in the office of the Secretary of the Territory, or such other place as the Governor may direct, in the penalty of two thousand dollars with approved security to be approved of by the judges of said courts respectively conditioned for the faithful performance of the duties of his office.

SEC. 12. *Be it further enacted*, That the said clerks and the sheriffs hereinafter mentioned shall hold their said offices during the period of two years, subject how-

ever to be removed by the Governor and the Legislative Council, or a majority thereof.

SEC. 13. *Be it further enacted*, That the said county courts shall be offices of original record for deeds, mortgages, wills, and other instruments required by law to be recorded within their respective counties. Recording of
deeds &c

SEC. 14. *Be it further enacted*, That the county courts shall have power to fine and imprison for contempt of their authority, provided the fine does not exceed twenty dollars, or the imprisonment three days.

SEC. 15. *Be it further enacted*, That there shall be appointed a sheriff for each county, who shall perform all the duties required of him by law, and before entering on the duties of his office shall take an oath faithfully to discharge the duties required of him by law, and execute bond in the office of the Secretary of the Territory, or such other place as the Governor may direct, in the penalty of five thousand dollars, with approved security, conditioned for the performance of the duties of his said office, which shall not be void upon the payment, but remain in full force, and the sheriff and his securities shall be liable to all persons injured by his failure in neglect of or non performance of his duties. Sheriff to be ap-
pointed

SEC. 16. *Be it further enacted*, That it shall be the duty of the judges thus appointed, to hold two terms in each year at the county seat in their respective counties, commencing at St. Augustine in the county of St. Johns on the first Mondays in June and January; in the county of Duval, on the first Mondays in March and October, and until the county seat of said county shall have been permanently established, the said court shall hold its sessions at Jacksonville in said county; in the county of Escambia the said court shall be held at Pensacola on the first Mondays in February and October; in the county of Jackson on the second Mondays in March and November, and until the county seat of said county shall be permanently located, the said court shall hold its sessions at the Big Spring on the Choctohacha [Choctawhatchie] river; in the county of Gadsden the said court shall hold its sessions on the first Mondays in April and October, and until otherwise provided by law at such place in said county, as said court may direct. To give bond

SEC. 17. *Be it further enacted*, That in all criminal causes in said court whenever any question of law shall be involved of difficulty, it shall be certified and adjourned over to the judge of the Superior Court, and the sentence of the county court shall be respite until the opinion of the next Superior Court be given, and the Judge to hold
two terms in each
year.

Time of holding

Difficult questions of law to be decided by Supr. Court

prisoner detained in custody until it shall be made known to that court.

Compensation of
Judges

SEC. 18. *Be it further enacted*, That the judges of the said courts shall receive such fees of office as may be established by law in full compensation for all services by them performed.

District Attorney
to attend

SEC. 19. *Be it further enacted*, That it shall be the duty of the District Attorneys of the Territory aforesaid, to attend the Sessions of the several county courts within their respective districts, and to prosecute for all offences against the laws of said Territory, cognizable by said courts, and that for all services rendered as aforesaid the said Attorneys shall receive such fees of office as shall be established by law.

Decision of Cy.
Court to be final
in appeals

SEC. 20. *Be it further enacted*, That whenever there is an appeal from a justice of the peace, to the county court, and the decision of the justice shall be confirmed, the decision of the county court shall be final, except in such cases as may arise where questions of law are alone involved.

GEO. MURRAY,

President of the Legislative Council.

Attested,

F. J. FATIO, Clerk.

(Approved June 24th, 1823.)

WM. P. DU VAL,

Governor of the Territory of Florida.

AN ACT,

For recording Marks and Brands, and concerning Estrays.

Marks & brands
may be recorded
in clerks office

Be it enacted by the Governor and Legislative Council of the Territory of Florida, That from and after the passing of this act, it shall be lawful for all persons residing in this Territory to record their marks and brands in the clerks office of the county in which such person resides; and if any person shall neglect to record the same, then and in that case, whenever any horses, mules, cattle, hogs or sheep, shall or may happen to be in dispute between the party so recording his marks and brands, and any other person not having recorded as aforesaid, both having one and the same marks and brands, and the property being found in the

possession of the person complying with the provision of this act, the party so claiming any such property in dispute as aforesaid, shall not be allowed to take the same out of the hands of the person found in possession, without such claimant can prove by disinterested testimony, such property so in dispute to be his property, such proof when the value of the property is under twenty dollars to be made before any justice of the peace of the county where such property may be found, and if above that value before any court having jurisdiction thereof.

When so recorded to have preference

SEC. 2. *Be it further enacted*, That when two or more persons shall have the same marks and brands, each of them recorded, in such case the oldest record shall be evidence of right so far as to compel the other party by disinterested testimony to prove his property, in the manner herein before directed.

Two or more of same description

SEC. 3. *Be it further enacted*, That it shall be the duty of the clerks upon the application of any person or persons, to record all marks and brands in books, to be kept by them for that purpose, and to give certificates thereof when required by any person or persons, for which they shall receive the sum of twenty five cents.

Clerk to keep a book.

SEC. 4. *Be it also enacted*, That it shall be lawful for any person, by himself or his agent to take up an estray on his own land or lands in which he is in possession of, and having taken it he or his agent shall forthwith give information thereof to some neighbouring justice of the peace, for the county, in which such estray was taken up, who shall thereupon issue his warrant to three disinterested persons of the neighborhood, commanding them, having been first duly sworn, to appraise such estray and certify the valuation under their hands, together with a particular description of the kind, marks, stature, brands, colour and age of the estray, which certificate shall by the justice be transmitted to the clerk of the county, within twenty days, and by such clerk shall be entered in a book to be kept for that purpose, for which he may demand and take twenty five cents to be paid by the taker up of the estray.

Possessor of land may take up Estrays

To be appraised

SEC. 5. *Be it enacted*, That the person taking up such estray shall cause a copy of every such certificate to be publicly affixed to the door of the court house if there be one, for and during the space of three months, next after the estray shall have been appraised, and shall also cause it to be publicly advertised in at least two other of the most public places in the county.

To be advertised

Owner not appearing property to be vested in the taker up

SEC. 6. *Be it enacted*, That if the valuation shall be under four dollars, and no owner shall appear until six months have elapsed, from the time of advertising then and in that case, the property shall be vested in the owner or possessor of the land, on which such estray was taken, and if the valuation shall exceed that sum, the person taking up such estray shall within three months after the appraisement cause such certificate to be published in any newspaper, that may be published in the county where such estray was taken up and copies of the certificates to be affixed at not less than two public places, near to the place where such estray was taken up for and during the space of two months, and if no newspaper be printed in the county, copies of the certificate shall be affixed by the person taking up the estray, in not less than three different public places in the county, and at two several times, distant from each other not less than four months, and if no owner appears to claim such estray within one year after the first publication, the property shall be thenceforth vested in the owner of the land or possessor wherein it was taken, but the former owner in either case, may at any time afterwards, upon proving his property, demand and recover the valuation money thereof, deducting therefrom the clerks, printers and justices fees, and if the owner of such property shall claim and prove his or her right to the property before it shall be vested according to the provisions of this act, in the person taking up the estray, then in that case the owner shall recover his property, paying the printers, justices and clerks fees, and all reasonable expenses for keeping and supporting such estray, such expenses to be determined by two house keepers of the neighborhood, to be sworn and appointed by a justice of the peace in the county in which such estray may have been taken up.

Owner may recover valuation money

Penalty for malicious taking up.

SEC. 7. *Be it enacted*, That if any person or persons shall vexatiously or maliciously take up as an estray any horse, mule, cattle, sheep or swine contrary to the true intent and meaning of this act, then and in that case such person or persons shall be liable to an action for damages to the party injured, and be fined not more than ten dollars at the discretion of the Court or Justice.

Boat taken up adrift.

SEC. 8. *Be it also enacted*, That if any person shall take up a boat or other vessel adrift he shall in like manner make application to some Justice of the peace, near to where such boat or vessel was taken up for his warrant to have the same valued and described by her

kind burthen and built, and shall proceed in all other respects and have the same benefit as before directed in the case of estrays.

SEC. 9. *Be it also enacted*, That what shall constitute an estray, shall be the wandering about the neighbourhood of cattle and hogs for the space of one year and of horses and sheep for three months.

Definition of estray

SEC. 10. *Be it further enacted*, That provided always that if after notice published as aforesaid any estray shall happen to die, or by any casualty get out of the possession of the person who took up the same, without his or her default such taker up shall not be answerable for the same or the valuation thereof, nor shall any taker up be answerable for any boat or other vessel lost as aforesaid.

Estray dying or escaping

GEO. MURRAY,

President of the Legislative Council.

Attested,

F. J. FATIO, Clerk.

(Approved June the 11th, 1823.)

WM. P. DUVAL,

Governor of the Territory of Florida.

AN ACT,

For the removal and prosecution of proceedings at Law and in Equity, begun and remaining unfinished in any of the former Courts of this Territory.

Be it enacted by the Governor and Legislative Council of the Territory of Florida, That all suits both at law and in equity heretofore instituted in any of the County or Circuit Courts of East or West Florida or carried to any of the said Courts by appeal which are undetermined and not already removed may be removed to the respective Superior or County Courts of East and West Florida either by the party or parties plaintiff or defendant, that such removal shall be effected by a transfer by the Clerk of the said County or Circuit Court, in which the suit was instituted or to which it was carried by appeal, of all the pleadings papers and documents relating thereto, to the Clerk of the superior or County Courts of the district in which the said cause or suit or other proceeding was instituted, and it shall be the duty of the Clerk of the Court to which

Suits in former courts may be removed

Form of removal

transfer may be made at the time of the reception of the pleadings papers and documents in such causes to give to the Clerk making the transfer a receipt for and specifying the said pleadings papers and documents provided that the party applying for the transfer whether plaintiff or defendant shall pay to the Clerk of the Court from which the papers are about to be removed all Clerks and Sheriffs fees which may have accrued in said Court.

Fees to be paid

SEC. 2. *Be it further enacted*, That each of the said Superior or County Courts shall respectively have power and are hereby required to proceed in every such cause or proceeding so removed in the same manner and to render the same judgment or decree therein as it might or would do if the said cause or other proceeding had originated in the said Superior or County Court provided notice of such removal be proved to the satisfaction of the said Superior or County Court to have been served upon the opposite party or parties or his her or their Attorney or agents in the cause or when the said opposite party or parties reside within the jurisdiction of the Court to which the cause shall have been removed to have been published in the newspaper published within the said Jurisdiction for four successive weeks or where the said opposite party or parties reside out of the jurisdiction of the said Court to have been published in such Newspaper once a week for eight successive weeks.

Notice of removal to be given

SEC. 3. *Be it further enacted*, That in every suit heretofore instituted in any of the said County or Circuit Courts in which judgment has been rendered in open Court, and the said judgment remains unsatisfied in whole or in part, the party or parties in whose favor judgment has been rendered may cause the pleadings and other papers in such suits together with a transcript of the judgment of the Court under the hand of the Clerk of the Court in which the same was rendered or under the hand of any other person having lawful charge of the records of such Court to be transferred to the Clerk of the Superior or County Court of the District or County within which such judgment was rendered whereupon it shall be the duty of the clerk of the said Superior Court upon being thereto required by the party or parties in whose favor such Judgment was rendered, or by his her or their Attorney or Agent to issue such *Writ of Execution* as might be issued if the judgment had been rendered or confessed in the said Superior or County Court for the amount of such

Judgment in former courts unsatisfied

How carried up

Execution may issue

judgment, and the costs awarded and rendered as aforesaid together with the costs legally accrued, subsequently to the rendition of the said judgment, or for whatever part thereof may remain unsatisfied, and the ministerial officer of the said superior or county courts shall carry into effect such writ as in other cases of execution.

SEC. 4. *Be it further enacted*, That whenever an execution shall issue under the next preceding section of this act for a greater sum than is legally due, or otherwise irregularly, the party or parties aggrieved or any of them, may apply to the judges of the Superior court in term time, or vacation for an order to stay further proceedings under the execution which the said judge is hereby authorised to grant upon such application being made to him under oath, setting forth in what the illegality or irregularity consists, and he shall forthwith cause a copy of such application to be served upon the opposite party or parties, or his, her or their attorney, and shall appoint a day to hear the parties concerned, and to decide upon the said application according to the right of the case, causing the execution when it shall have issued for more than shall be legally due, to be vacated and a new execution to be issued for the amount determined by the said judge, to be due, to be proceeded on according to law.

Execution issuing irregularly

Proceedings may be stayed

SEC. 5. *Be it further enacted*, That the sheriff of the aforesaid county and circuit courts, shall within thirty days from the passage of this act, deposit with the clerk of the aforesaid superior or county courts, all process, writs and executions of every kind issued from any of the said county or circuit courts, which may at any time heretofore have come to and which now remain in their hands together with a return of their actions and doings upon such process, writs, and executions.

Sheriffs to return all process in their hands

GEO. MURRAY,
President of the Legislative Council.

Attested,
P. J. FATIO, Clerk.

(Approved 11th June 1823.)

WM. P. DUVAL,
Governor of the Territory of Florida

AN ACT,

To provide for holding terms of the Superior Courts in the Counties of Jackson and Duval in the Territory of Florida.

Duval county

Jackson county

Be it enacted by the Governor and Legislative Council of the Territory of Florida, That the judge of the Superior Court of the district of East Florida shall hold a court on the first Mondays of April and December of each year, at the county seat, in the county of Duval ; that until the said county seat shall be permanently established the said court shall be held at Jacksonville on the river St. John's. That the judge of the Superior Court for the district of West Florida shall hold a court on the first Mondays of April and December of each year, at the county seat in the county of Jackson, and that until the said county seat shall have been permanently established the said court shall be held at the Big Spring on the Choctahacha [Choctaw-hatchie] river.

SEC. 2. *Be it further enacted.* That the said courts shall continue in session from day to day until all the business of their respective terms shall have been completed.

GEO. MURRAY,

President of the Legislative Council.

Attested,

F. J. FATIO, Clerk,

(Approved 11th June 1823.)

WM. P. DUVAL,

Governor of the Territory of Florida.

AN ACT,

To provide for the partition of Lands in this Territory, in the Courts of Common Law thereof.

Be it enacted by the Governor and Legislative Council of the Territory of Florida, That whenever divers persons being of full age or under the age of twenty one years, are or shall be seized or possessed in fee for life or for a term of years, of any lands or tenements in this Territory, in coparcenary, joint tenancy, or tenancy in common, by descent, devise or by any conveyance or a-

ny other means whatsoever, and no provision is or shall be made thereby, for the division or partition of the said lands or tenements, it shall and may be lawful for any such person, being of full age, or for the guardian or guardians of any such person or persons, being under the age of twenty one years, aforesaid, to apply by petition to the superior or county court of this Territory of the district or county in which said lands and tenements or any part of them are situated, for a writ of partition of the said lands and tenements. That every such petition shall set forth the petitioners title, the description, dimensions and boundaries of the lands or tenements to be divided so far as they can be given, the estate or interest claimed by the petitioner or petitioners therein, together with the name or names of every person and persons having any interest, estate or title, to the said lands or tenements or any part of them, so far as the petitioners knowledge or information extends, and will enable him her or them to set forth; and the petitioner or petitioners shall at the time of presenting such petition for the decision of the court thereon, exhibit and lay before such court for its examination, the grants, deeds, conveyances or other evidence, on which the petitioners title to the said lands or tenements, depends and rests: and if the court shall find that the title set up by the petitioner or petitioners to the said lands or tenements or any part thereof is supported by reasonable evidence, it shall be its duty, and it is hereby empowered to issue a writ of partition under the hand of the judge or chief justice thereof, and under the seal of the Court, if it have one directed to any seven discreet and fit persons to be named by the court requiring and commanding them or any five of them to execute such writ by making partition of the lands and tenements therein mentioned, or any such part thereof as they shall be able to make partition of, within the time limited by the said writ for making such partition, and to make due return thereof according to law, *Provided always*, That the persons to whom any such writ shall be directed, before they enter upon the duties thereby assigned to them, shall severally make oath in writing to be by them and every of them, subscribed before the court awarding such writ, or before any judge or justice of the peace of this Territory, or before any other person or persons specially named, assigned and authorised by the said court for such purposes, that they will truly, faithfully, and impartially, to the best of their skill understanding and

Joint tenant may
petition Supr. or
County Court

Form of petition

Title deeds to be
submitted.

Writ of partition
to be issued

Proviso

Oath of Commis-
sioners

abilities, divide and partition in the most beneficial manner, for the parties interested, the lands and tenements in the said writ described, or so much thereof as they shall be able to divide and partition within the time limited by the said writ for its return, and that they will make due return of the said writ, and the partition to be by them made according to law.

Notice of petitioner advertised.

SEC. 2. *Be it further enacted*, That no petition for a partition of lands or tenements under this act, shall be presented to or received by any Court of this Territory unless it shall be made to appear to the satisfaction of the Court to which such petition may be presented that notice of the intended application for a writ of partition hath been published in some newspaper printed in the District in which the lands or tenements or some part thereof lie or if there be no Newspaper published there then in any Newspaper printed in the Territory and if none be printed in the Territory, then in a Newspaper of the State next adjoining the District in which the lands or tenements are situated, for the space of eight weeks previous to the meeting of the court at which such petition shall be presented and that such notice was also posted up at the Court house of the Superior or County court of the District or County in which the lands or tenements lie, eight weeks, before the meeting of the said court, to which the petition shall be presented. Every such notice shall set forth the name or names of the petitioner or petitioners, for partition, a description of the lands or tenements to be divided, the title, estate or interest claimed by the petitioner, or petitioners, in the said lands or tenements, together with the name or names of the person or persons having an interest in the said lands or tenements, with the petitioner or petitioners, and their estates, rights and interests in the same, if known to the said petitioner or petitioners and also the court and the term thereof, at which the said petition for partition will be presented; and every such petition shall be filed in the office of the clerk of the court, to which it may be presented, six weeks before it shall be so presented.

Form of the advertisement

Partitioner also to give notice.

SEC. 3. *Be it further enacted*, That before the persons named as partitioners in any such writ of partition shall enter upon their duties under it, they or any five of them, shall give notice in the manner herein before prescribed, and to be pursued by persons about to petition for partition, for the space of thirty days, of the time at which they will enter upon the execution of the writ of partition, to them directed, which notice shall

also set forth the name or names of the person or persons at whose instance, and the court from which the writ issued, the name or names of the person or persons interested in the lands or tenements, to be partitioned, if they are stated in the petition for partition, the description of the lands or tenements contained in the said petition, and the time at which the said writ is returnable. After the expiration of the said thirty days it shall be the duty of the partitioners or any five of them, to proceed to the execution of the writ to them directed, and to make a true, faithful and impartial partition and division of the lands and tenements, in the said writ described, or of such part or parts thereof, as they can divide within the time limited for the return of the said writ, and every such partition shall be made in that manner, which the said partitioners shall consider and believe according to the best of their understanding and judgment to be most beneficial to all the parties interested in the said lands or tenements. Every such partition shall be returned under the hands and seals of the partitioners making it, to the court from which the writ issued, and to the terms thereof, to which it shall be made returnable, except as is hereafter excepted, there to be filed and entered of record, and the judgment of the said court, duly entered upon the said partition, shall be conclusive and final upon all the parties concerned, except as is herein after excepted. And judgment may be entered upon the said partition at the term next succeeding the return of the said writ, *Provided*, That sufficient objections are not filed to the contrary by the party or parties interested. And it shall be lawful for any of the parties interested in the lands or tenements partitioned, to shew to the court, at any time before its judgment shall be entered up, that he, she or they are injured by the said partition, and the said court shall confirm, modify, or set aside such partition, according to the right of the case.

To divide the land

And make return to court

Judgment to be entered.

SEC. 4. *Be it further enacted*, That if any person or persons, having any estate, title or interest in any lands or tenements partitioned, under the provisions of this act, shall at the time of such partition be under the age of twenty one years, feme covert, insane, or who may be non resident, it shall and may be lawful for them, or any of them, at any time within one year, from the time at which their respective disability or disabilities shall be removed, if he, she or they conceive that they have been aggrieved by the said partition, to file his her or their petition to the court, which rendered judgment on

Infants, non residents &c.

If aggrieved may
be heard.

the partition, setting forth the part of his, her or their disability at the time of the partition, and the special matter and manner in which he she or they consider themselves injured and aggrieved by the said partition, and praying the said court that right and justice may be done to them in the premises, a copy of which petition shall be served upon the parties who claim the benefit of the said partition, and they shall be bound to plead thereto within thirty days from the time of the service of such copy upon them. And if any matters of fact are involved, they shall be tried and returned by a jury, to the court, which shall thereupon decide upon the pleadings, and the facts so returned, and if no facts are in dispute, upon the pleadings only, and shall confirm or set aside the judgment, rendered upon the partition, and all the previous proceedings according to the right and justice of the case.

Writ not executed
an alias may
issue.

SEC. 5. *Be it further enacted*, That in all cases in which partitioners may from the quantity of the lands to be partitioned, or from any other reasonable cause, have been unable to complete the partition of the lands described in the writ, to them directed, so as that the return thereof may not be made at the term of the court, to which it is returnable, it shall and may be lawful for the court from which the original writ of partition issued, upon reasonable cause shewn by affidavit, the failure to return the said writ, according to its exigency, to grant an alias or second writ, commanding and requiring the said partitioners to complete the partition of the lands and tenements therein mentioned, and to return the said writ and their partition by a day to be therein named according to law.

Objections may
be made by plea

SEC. 7. *Be it further enacted*, That if upon any petition for partition, under this act, any objections shall be made to the granting the writ of partition, they shall be tried and decided by the court, to which the petition shall be made with or without a jury, as the nature of the objections disclosed by the plea may require, and the said court shall overrule or allow the objections, or annex conditions and terms to the granting of writs of partition according to the nature of the case.

Partitioners to
receive compensation.

SEC. 7. *Be it further enacted*, That persons making partitions under this act, shall be allowed all reasonable expenses, incurred by them in making the same, and also a reasonable compensation for their services,

to be ascertained under the direction of the court, the payment of which may be enforced by attachment.

GEO. MURRAY,

President of the Legislative Council.

Attested,

F. J. FATIO, Clerk.

(Approved 28th June 1823.)

WM. P. DUVAL.

Governor of the Territory of Florida

AN ACT,

Concerning Arbitrations and Awards.

Be it enacted by the Governor and Legislative Council of the Territory of Florida, That it shall and may be lawful for all persons, desirous of ending any matter of difference, controversy or quarrel in which any action at law or in equity will lie, or in which any action or suit has been commenced, and is pending, to agree that their said matter of difference, controversy or quarrel shall be adjusted and determined by arbitration, and to appoint one or more arbitrators or umpire to adjust and determine the same. The matters in difference between the parties shall thereupon be submitted to the said arbitrator, arbitrators or umpire, by bond covenant or other agreement in writing, and the parties aforesaid may stipulate and agree either in said bond, covenant or agreement, or by a separate agreement, that the said submission to arbitration shall be made a rule of any court of record in this Territory.

Arbitrators may be appointed

By rule of Court

SEC. 2. *Be it further enacted,* That when any submission is intended to be made a rule of court as aforesaid, an agreement to that effect in writing, signed by the parties, shall be filed in the office of the clerk of the court, of which said submission is to be made a rule, and the clerk shall thereupon enter the said rule.

Agreement to be filed.

SEC. 3. *Be it further enacted,* That no award of any arbitrator or arbitrators or umpire, duly appointed, made pursuant to the said submission, shall be set aside by the said court, except on the ground of fraud, corruption, gross negligence or misbehavior of one or more of the arbitrators or umpire, or of evident mistake acknowledged by the arbitrators or umpire who may have signed the award.

Award final unless fraud &c. be suggested

SEC. 4. *Be it further enacted,* That any party feel-

Party aggrieved
may apply by
motion

ing himself aggrieved by any award, made a rule of court as aforesaid, and conceiving that he has just ground to set aside said award, may apply to the court for that purpose, on motion at the ensuing term of said court, on giving the opposite party or his attorney ten days previous notice, of such intended application, and of the grounds on which the motion will be made, to set aside said award, and if the award be made during the term of the court, and there be a sufficient time before the end of the term, to give the said notice of ten days, and the same be given, the motion to set aside the award may be made during that term.

"To be tried on
affidavits

SEC. 5. *Be it further enacted*, That the court in which any motion may be made, to set aside any award made as aforesaid, shall require affidavit of the facts constituting the grounds on which the motion was made, and shall also, if offered, receive affidavits on the other side, but no parol testimony shall be admitted on either side.

Award to be en-
tered of record

SEC. 6. *Be it further enacted*, That if no motion be made to set aside any award made as aforesaid, it may be entered of record at the ensuing term of said court, during the term thereof; and as far as the said award relates to the payment of money by either party, shall have the force and effect of a judgment, duly docketed, from the day of entering of said award, an execution may be issued thereon, as in cases of judgment duly entered, and so far as the said award relates to the performance of any other lawful act, the party, failing to comply with said award, shall be considered in contempt, and by the order of the court, shall be committed to prison, there to remain without bail or mainprize until compliance with the order of the court in the premises.

Arbitrators to
take an oath

SEC. 7. *Be it further enacted*, That the arbitrator or arbitrators, or umpire, appointed as aforesaid, shall before entering upon the investigation of the matters submitted to them, be severally sworn, or affirmed, before some judge or justice of the peace, faithfully and diligently to execute the trusts committed to them by the submission; and the examination of all witnesses before the said arbitrator, arbitrators or umpire, shall be under oath or affirmation, and if the parties themselves be examined, such examination shall also be under oath or affirmation, and in the presence of each other, and the said arbitrators or either of them, shall be and they are hereby authorized and empowered, to issue subpoenas to compel the attendance of witnesses.

May issue subpoe-
nas.

under the same regulations as the clerks of the several courts of this Territory, which said subpœnas shall be served by the sheriff or any constable of the county, and shall be obeyed by the witnesses in the same manner as subpœnas issued from any court of record within this Territory.

SEC. 8. *Be it further enacted*, That controversies and suits in which infants are interested, may in like manner, when made a rule of court, be submitted to arbitration, by the consent of their lawful guardians ; and executors and administrators may also submit to arbitration any matter in dispute or controversy, in relation to the goods, chattels, debts and credits of their testator or in-estate.

Ex'rs or infants
may arbitrate

SEC. 9. *Be it further enacted*, That nothing in this act contained, shall deprive any party to any arbitration, not made a rule of court as aforesaid, from seeking relief in a court of equity.

Informal awards

SEC. 10. *Be it further enacted*, That the arbitrators for their services shall be entitled to receive one dollar and fifty cents per day if demanded, to be paid jointly by the contending parties, before entering the award. The fees of the clerk for entering the rule of court, shall be jointly paid by the parties previous to the entering thereof, unless otherwise directed by the award.

Compensation to
arbitrators

SEC. 11. *Be it further enacted*, That witnesses obeying the subpœna of the said arbitrators, shall be allowed the same compensation, and entitled to the same privileges as if summoned by the clerk of any court of record.

Witnesses

GEO. MURRAY,

President of the Legislative Council.

Attested,

F. J. FATIO, Clerk,

(Approved June 11th 1823.)

WM. P. DUVAL,

Governor of the Territory of Florida.

AN ACT,

To legalize certain conveyances of property in the Territory of Florida.

Deeds between
1817 & 22 to be
admitted to re-
cord

Be it enacted by the Governor and Legislative Council of the Territory of Florida, That all deeds of conveyance, bills of sale, mortgages, or other transfers of property, either real or personal, within the limits of this territory, made and received bona fide, and upon good consideration, at any time between the first day of January 1817 and the first day of October 1822, shall be as good and efficient in law and equity, as if the same had been made and executed according to the formalities of the Spanish law, as against the maker or makers thereof, and every person or persons claiming, by, through, or under him, her or them, *Provided*, That nothing in this act contained shall be so construed as to effect the interest of persons not parties to any of the contracts aforesaid. *And Provided also*, That the said deeds of conveyance, bills of sale, mortgages, and other transfers, shall be recorded agreeably to the laws of this Territory, within six months from the passage of this act.

GEO. MURRAY,

President of the Legislative Council.

Attested,

E. J. FATIO, Clerk,

[Approved June 24th, 1823.

WM. P. DUVAL,

Governor of the Territory of Florida.

AN ACT,

Authorizing the appointment of Justices of the Peace, and defining their powers.

Justices to be ap-
pointed

Be it enacted by the Governor and Legislative Council of the Territory of Florida, That there shall be a competent number of justices of the peace, appointed in the several counties of this Territory.

To take an oath

SEC. 2. *Be it further enacted*, That every person so appointed, before he enters on the duties of his office, shall take an oath or affirmation to support the constitution of the United States, and also honestly and dili-

gently to execute the duties of his office, without fear, favor or oppression, to the best of his abilities, which oath or affirmation may be administered by the clerk of the County Court, or any judge of this Territory, and a certificate of the same shall be entered of record in the clerks office of the said court.

SEC. 3. *Be it further enacted*, That the justices of the peace so appointed, and each of them, shall have power and authority to hold a court as often as may be necessary for the trial of civil causes, wherein the amount of the debt, damages or value of the thing in controversy, does not exceed the sum of one hundred dollars, exclusive of costs, saving and reserving to the parties the right of trial by jury, in all cases where the sum or demand in controversy, shall exceed twenty dollars, exclusive of costs, but no action for assault and battery false imprisonment, trespass on lands, where the title to said lands may come in question, or actions on the case for slander, libel, or malicious prosecution, shall be cognizable by any justice of the peace, and that in all cases under ten dollars, their decision shall be final.

Their jurisdiction.

SEC. 4. *Be it further enacted*, That all suits before a justice shall be commenced by the issuing of a warrant, or a summons as hereinafter mentioned.

Process

SEC. 5. *Be it further enacted*, That whenever any party plaintiff, his agent or attorney, shall make oath or affirmation before the justice, of the debt or damages demanded, and that he verily believes that he will be in danger of losing the same, or some part thereof, if the defendant be not arrested and held to bail, a warrant shall issue against the defendant, commanding the constable or other officer attending on the Court of the said justice, forthwith to arrest the said defendant, and bring him before the said justice, and said warrant shall express the nature and amount of the plaintiffs demand; and in all other cases a summons shall issue citing the defendant to appear before the said justice, on some particular day mentioned in said summons, at least six days from the issuing and service of said summons, to answer to the plaintiff's demand, the nature and amount of which shall be expressed in said summons, and which summons or a copy thereof, shall be personally served on the defendant, or left at his dwelling house or lodgings with some white person of the family of the age of fifteen years or more.

Upon affidavit may hold to bail

Otherwise a summons

SEC. 6. *Be it further enacted*, That when any defendant arrested on a warrant, issued as aforesaid, shall be brought before the justice, the said defendant may insist

on the immediate trial of the cause, if he make affidavit that he is bound immediately on a voyage to sea, or is about to take a journey immediately, without the jurisdiction of the said justice, and in such case the justice shall send an officer to give notice to the plaintiff, his agent or attorney, to attend, and if he cannot be found, or fail in attending, within one hour from the time, when the defendant is brought before the justice, as aforesaid, be ready and willing to give bail, he shall have six days to answer the plaintiffs demand, on giving satisfactory bail for his appearance, and also for the payment of the debt or damages, which may be awarded, in case judgment be rendered against him, and he do not thereupon immediately surrender himself; and when any defendant shall have been duly served with a summons, and fail to appear on the day and hour appointed, if the summons shall have been personally served on the defendant, the justice after waiting two hours, shall proceed to hear the cause, and give judgment thereon, the same as if the defendant had duly appeared, but where the summons shall not have been personally served on the defendant, if he fail to appear on the day, and at the hour appointed, the justice shall not hear the cause, but the party plaintiff shall have a right, immediately, without making any affidavit, as mentioned in the preceding section, to a warrant against the defendant, which shall be served in the same manner, and trial thereon had, as in cases of warrant issued in the first instance.

SEC. 7. *Be it further enacted*, That on satisfactory cause shewn to the justice, before any trial take place, he shall at the instance of either party postpone the trial for a period not exceeding twelve days—but in such case, if the postponement be made at the instance of the defendant, bail if required shall first be given, and if any defendant request a longer postponement, on account of the absence of a material witness, it shall be in the sound discretion of the justice to grant the same, for a period not exceeding three months, on the affidavit made by the defendant, stating the name of his witness, his place of residence, and the facts which he expects to be able to prove by him, and that he expects to be able to obtain the testimony of the witnesses, by commission or otherwise, within the said three months—and every justice of the peace, in cases of postponement, on account of the absence of material witnesses, shall have power to issue commissions for taking the testimony of such witnesses, according to the practice

Upon giving bail
defendant may
have six days to
answer

Defend't not ap-
pearing, judgm't

Justice may post-
pone for good
cause

established in the Superior Courts for this Territory.

SEC. 8. *Be it further enacted*, That the rules of evidence recognized and established in the said Superior Courts, shall be observed by the justices of the peace, in all trials before them, and neither the party plaintiff or defendant shall be permitted to give evidence in any cause wherein he is a party—and all discounts and set offs which the defendant can prove, at the trial, and which are admissible according to law and equity, and the justice of the case, shall be allowed.

Evidence

SEC. 9. *Be it further enacted*, That each of the said justices shall keep a book of record of the proceedings, in all causes tried before them, in which book they shall on the commencement of the trial, note down the names of the parties plaintiff and defendant, the nature of the action, and the amount of the debt or damages claimed, the plea of the defendant, and the names of the attorneys, if any employed in the cause—they shall also note down the names of the witnesses examined on the trial, and state whether called by plaintiff or defendant, and a summary of the testimony given by them, and if any written evidence be produced, its nature and description shall be noted down, and finally, the judgment rendered—but written pleadings shall not be required in any cause tried before a justice of the peace.

Form of record

SEC. 10. *Be it further enacted*, That after judgment rendered by any justice of the peace, if no appeal be made within four days thereafter, or *certiorari* served, the party obtaining the judgment may have execution thereon for the amount of the same, with all costs, either against the body or against the goods, chattels, and slaves of the party, against whom the judgment may have been rendered, or both executions may be included in one, and either the body may be taken, or a levy may be made on the goods, chattels, and slaves, on the same execution, but if the body be first taken, no execution shall lie on the property, and in no case shall execution issue on a judgment rendered by a justice of the peace, against the lands and tenements of the defendants; that the execution issued as aforesaid shall be directed to any constable of the county, and shall be made returnable to the justice who issued it, not less than ten or more than thirty days from the date thereof; which shall be executed and returned by said constable accordingly, provided that in all cases where the original debt, exclusive of interest and costs, shall amount to twenty dollars, or more, the defendant upon giving

Execution

Return

bond with security, may have a stay of execution for sixty days.

Bill of excep-
tions

Appeal

SEC. 11. *Be it further enacted*, That either party on a trial before a justice of the peace, shall have a right to except to any decision he may make on the admission of evidence, or any other question of law, arising in the case, and tender a bill of exceptions to such decision, which the justice is hereby required to sign and seal, and in case of an appeal, to make return thereof, together with the proceedings in the cause, to the court above, and the like return of the proceedings shall be made in cases of *certiorari*, and in all cases either party shall have a right to appeal from the judgment of the justices of the peace, on questions of law, *Provided*, such appeals be made within four days from the rendering of the judgment, all costs being paid by the appellants.

Appeal bond

Clk of cty court
to issue summons

Trial on appeal

SEC. 12. *Be it further enacted*, That in all cases where either of the parties may desire to appeal from the judgment of the justice, pursuant to this act, he shall at the time of rendering the said judgment, or within four days thereafter, apply to the said justice for said appeal, and shall enter into bond in double the amount of such judgment, with security, to be approved of by the justice from whose judgment the appeal is taken, conditioned for the payment of the amount of the judgment and costs, in case the said judgment shall be confirmed on the trial of the appeal, and the said justice shall thereupon suspend all further proceedings in said case, and shall deliver to the clerk of the County Court of his County, all the papers appertaining to said cause, together with the bond executed by the party or parties taking the appeal, and a copy of the judgment rendered by the said justice, and it shall be the duty of the said clerk, on receiving the papers aforesaid, to issue a summons to the appellee or appellees, to appear at the next term of the court to which the appeal is returned, and the sheriff or constable shall summon the appellee or appellees, his her or their agent or attorney, if within the county, which summons shall be executed ten days before the commencement of the term at which the said appeal shall be tried, and the said court shall at the first term after said appeal, hear and determine the same, in a summary way, without pleading in writing, according to the justice of the case, unless for good cause it be continued to the next term.

SEC. 13. *Be it further enacted*, That where the appellee or appellees shall reside in another county of the

Territory than that in which the appeal is taken, it shall be the duty of the clerk of the court to which the appeal is made, and he is hereby authorised to issue a summons directed to the sheriff or any constable of the county, in which the said appellee or appellees may reside, requiring him, her or them, the said appellee or appellees, to appear at the next term of the said court, and the said sheriff or constable shall execute the same and make return thereof, as is provided in the next preceding section of this act.

Party residing in a foreign county

SEC. 14. *Be it further enacted*, That the said justices of the peace appointed as aforesaid, shall be conservators of the peace, within their respective counties, and have power to issue warrants in all cases of misdemeanors and felony, take recognizances to keep the peace, and to bind defendants to appear at any county or superior court, to answer any criminal charge not involving capital punishment, and to commit to prison in all capital cases, and where satisfactory bail cannot be given, in all other cases.

Conservators of the peace

SEC. 15. *Be it further enacted*, That where any complaint shall be made, upon affidavit, before any justice of the peace, of any offence committed against the laws of this Territory, or the laws of the United States, it shall be his duty forthwith to issue his warrant to any constable of the county, or to the sheriff, or marshal of the United States, in case the said justice should deem the complaint of an important nature, commanding the said constable, sheriff or marshal, forthwith to arrest the offender, and bring him, her or them before the said justice, expressing in said warrant the nature of the offence—when the offender or offenders shall be arrested and brought before the justice, if the offence charged against the prisoner be merely a misdemeanor, and the justice be satisfied that there is good grounds to hold him to bail, the said justice shall take his recognizance with one or more securities, for his appearance, at the next county or superior court, but on failure of entering into the said recognizance, the justice shall commit the prisoner to prison.

Process in criminal cases

Recognizances

SEC. 16. *Be it further enacted*, That when any affidavit shall be made before any justice of the peace, of any offence committed, he shall require that the affidavit state as particularly as can be done, the nature of the offence, and the circumstances attending its commission, and in cases of larceny, a particular description, as nearly as can be made, of the article or articles stolen, and of the value of each separately, must be given, and

Form of affidavit in criminal cases

the names of all the witnesses, and their places of abode, noted down, and those whose testimony shall be deemed important, bound by recognizance to appear before the court, where the trial is to take place, to testify—but bail for the appearance of any witness shall not be required; a witness may however be committed to prison, if he will not enter into a recognizance to appear.

Form of mittimus

SEC. 17. *Be it further enacted*, That whenever any criminal case occurs before the justice of the peace, if it be not bailable, or if the prisoner cannot give satisfactory bail, the justice shall make out a commitment to a constable, or other officer, requiring that the prisoner be taken to jail, and there detained until discharged by due course of law; and which commitment shall express the nature of the offence, and upon whose oath or affirmation the prisoner has been accused and arrested.

Judges to be conservators of the peace

SEC. 18. *Be it further enacted*, That the judges of the superior and inferior courts respectively shall *ex officio* be justices and conservators of the peace, and have and exercise, whenever they may deem it fit and proper, all the powers and duties of justices of the peace, in criminal cases, and shall have power and authority "(if they see fit) to admit prisoners to bail, where it may have been refused by any of the justices of the peace.

To deliver papers to District Attorney

SEC. 19. *Be it further enacted*, That it shall be the duty of the several justices of the peace to keep all papers in relation to criminal matters, in good order, and on file in their offices, separately and distinctly from papers concerning civil causes, and to hand over to the public prosecutor, at least ten days before the meeting of every court, all affidavits, depositions and recognizances, taken in any and every criminal case.

Power to punish for contempt

SEC. 20. *Be it further enacted*, That each of the said justices shall have power to punish for any contempt committed before him, in the exercise of his judicial functions, or sitting as a committing magistrate, by a fine not exceeding five dollars, and imprisonment not exceeding twenty four hours.

If no jail in the county, prisoner to be delivered to sheriff of next city

SEC. 21. *Be it further enacted*, That if any person or persons shall be committed by a justice of the peace in any county where there shall be no jail or place of safe keeping, it shall be the duty of the said justice of the peace to direct the sheriff of said county to deliver such offender or offenders to the sheriff of the next adjoining county, where a jail or place of safe keeping may be, there to be confined and dealt with according to law.

and the said sheriff shall and he is hereby authorised to summon a guard for that purpose.

GEO. MURRAY,

President of the Legislative Council.

Attested,

R. J. FATIO, Clerk,

[Approved June 29th, 1823.]

WM. P. DUVAL,

Governor of the Territory of Florida.

AN ACT,

To provide for the establishment of the seat of government in the Territory of Florida.

Be it enacted, by the Governor and Legislative Council of the Territory of Florida, That with a view to the location of the seat of government for the territory aforesaid, there shall be appointed by the Governor, two commissioners, one from that part of the territory known as East Florida, and one from that known as West Florida. That the commissioners thus appointed shall meet at St. Marks on the Gulf of Mexico, on the first day of October next, and thence proceed carefully to explore and examine all that section of country embraced between the Ocklockny river on the West, and the Suwannee river on the East, and between the Northern boundary line of said Territory, and the Gulf of Mexico.

Commissioners
to be appointed

SEC. 2. *Be it further enacted,* That the said commissioners shall be, and they are hereby authorised and empowered, after making the examination aforesaid, to select the most eligible and convenient situation for the seat of government for the Territory of Florida.

To select a site

SEC. 3. *Be it further enacted,* That the said commissioners shall keep a journal and take notes on the topography of the country, examined by virtue of this act, particularly describing the quality of the soil, its local situation, and the streams by which it is watered. That on or before the first day of January next the said commissioners shall submit to the Governor of the Territory a report in writing, of all their proceedings by virtue of this act, accompanied with their journals and topographical notes on the country by them examined.

To keep a journal

Commissioners
disagreeing, gov.
to decide

SEC. 4. *Be it further enacted*, That if the said commissioners shall disagree with regard to the situation on which the seat of government should be located, then and in that case, the journals and topographical notes of the said commissioners, together with the subject of their disagreement, shall be submitted to the Governor of the Territory, who shall be, and he is hereby authorised, from all the information adduced, to decide in favor of the situation selected by either commissioner.

Decision final

SEC. 5. *Be it further enacted*, That the situation thus selected shall thenceforth constitute the seat of government for the Territory of Florida.

Next council to
meet at the place
chosen

SEC. 6. *Be it further enacted*, That the next session of the Legislative Council of said Territory shall be held at the situation selected by said commissioners, or by the governor and either of them, in case of the disagreement of said commissioners, if in the opinion of the Governor the Legislative Council can be there accommodated.

Or at St. Augustine

SEC. 7. *Be it further enacted*, That if the seat of government for the Territory aforesaid, should not be located in time for the meeting and accommodation of the Council at its next session, then and in that case, the Governor shall be, and he is hereby authorised and empowered to issue his proclamation, directing the next session of the Legislative Council, to be held at the City of St. Augustine.

Compensation to
commissioners

SEC. 8. *Be it further enacted*, That the said commissioners shall receive five dollars each per day, in full compensation of all services rendered by virtue of this act.

GEO. MURRAY,

President of the Legislative Council.

Attested,

F. J. FATIO, Clerk.

(Approved 24th June 1823.)

WM. P. DUVAL.

Governor of the Territory of Florida

AN ACT,

To authorise the Attorneys for the Territory to appoint Deputies.

Be it enacted by the Governor and Legislative Council of the Territory of Florida, That the Attorney for the Territory, for the time being, is hereby authorised empowered and required to depute a fit person, being a barrister or Attorney at law, to be approved of by the Governor, for whose conduct he shall be answerable, to prepare and prosecute indictments in his stead at such County Courts, where he cannot attend, to execute the duties of his office in person. *Provided nevertheless,* That in case the Attorney for the Territory, or his deputy, shall not attend any of the said courts, that then any barrister, or attorney at law, may prepare and prosecute indictments by leave, and appointment by the judge or justices of the said county courts, and be allowed the same fees as are appointed for the Attorney of the Territory.

District Attorney to appoint deputies.

SEC. 5. *Be it further enacted,* That the said Attorney for the Territory shall have a right to call upon the said deputies, or any or either of them for, and to require their assistance, or support in behalf of the Territory, in any case where he may think it necessary or proper, or whenever sickness may prevent him from doing his duty.

May call for their assistance.

GEO. MURRAY,

President of the Legislative Council.

Attested,

F. J. FATIO, Clerk,

(Approved June 24th 1823.)

WM. P. DUVAL,

Governor of the Territory of Florida.

 AN ACT,

Regulating the mode of proceeding on attachments.

Be it enacted by the Governor and Legislative Council of the Territory of Florida, That it shall and may at all times be lawful for any judge or justice of the peace of the Territory aforesaid, within their respective jurisdictions, to grant writs of attachment against the

Attachment may be granted vs. the estate of absconding, absent or concealed debtors.

E

lands and tenements, goods, chattels, money, effects, rights and credits, in whose hands or possession soever the same may be found, or by whomsoever the same may be due and owing, of every person and persons residing out of, and beyond the limits of this Territory, or who has or have been absent from the same, for the space of two months, without having left an agent, authorised in writing, to receive the ordinary process of law issued against him, her or them, or who absconds, or who conceals himself, herself or themselves, so that the ordinary process of law cannot be served upon him her or them, or who is, or are about to remove himself, herself or themselves, or his her or their property out of this Territory, upon the application for such writ of attachment, by any person or persons having a debt, claim or demand, founded on any contract express, or implied, or arising out of the unlawful detention or conversion of any property by any person or persons so residing out of, or having been absent from this Territory, or who absconds or conceals himself, herself or themselves, or his her or their property, out of this Territory, upon the application for such writ of attachment, by any person or persons having a debt, claim or demand, founded on any contract express or implied, or arising out of the unlawful detention or conversion of any property, by any person or persons, so residing out of, or having been absent from this Territory, or who absconds or conceals himself, herself, or themselves, or who is or are about to remove himself, herself or themselves, or his her or their property, out of this Territory as aforesaid, *Provided always*, That the party or parties, his her or their agent or attorney, applying for said writ of attachment, if residents of this Territory, shall make affidavit before the said judge or justice, or if residing beyond the limits of this Territory, the said affidavit shall be taken before any judge or justice of any court of record of either of the United States, or any of the Territories of the United States, authenticated by the clerk of such court, under the seal of the court if it have a seal, or without if it have no seal, the fact of the court having no seal being stated in the clerks authentication, which affidavit shall set forth the amount of the sum or property claimed, and upon what the claim is founded, and also the ground or grounds upon which the application is made, for the writ of attachment, and, *Provided also*, That a bond be given by the party or parties applying for the attachment, previous to the order for issuing thereof, with

Pl'tff to make affidavit.

And to give security.

two or more sufficient securities, to be approved of by the judge or justice ordering the attachment, in double the sum for which the attachment may be ordered, payable to the party or parties, defendant, in the attachment, by reason of the issuing the said attachment, and the failure to prosecute the same to effect.

SEC. 2. *Be it also enacted*, That when any person or persons, his, her or their agent or attorney, applying for said writ of attachment, shall have made the affidavit, and executed the bond required by the provisions of this act, it shall be the duty of the judge or justice, before whom the said affidavit and bond shall be executed, and to whom the same shall be delivered, to issue a writ of attachment to the ministerial or executive officer of the court, to which the said writ of attachment shall be returnable, directing and commanding him to levy upon, attach, seize, and take into his custody and possession, which it shall be his duty to do, so much of the lands, tenements, goods, chattels, money, effects, rights and credits of the person or persons against whose property the attachment is issued, in whose hands or possession soever, the same may be found, or by whom soever the same may be due and owing, as will be sufficient to satisfy the demand of the plaintiff or plaintiffs in the attachment, so as to make the person or persons against whose property the attachment is issued, a defendant or defendants in the suit to be instituted by the party or parties plaintiffs in the attachment.

Form of the writ

If the sum exceed \$50, to be directed to Sheriff

SEC. 3. *Be it further enacted*, That when the sum for which the attachment shall be granted, shall exceed the sum of fifty dollars, the said writ of attachment may be directed to the sheriff, coroner, or other ministerial officer of the Superior or County Courts respectively — That where the demand claimed shall not exceed fifty dollars, the said writ of attachment shall be directed to any constable, and shall be executed and returned to the Judge or justice issuing the same, or some other justice of the peace who shall and may proceed to try and determine the said attachment in the same manner as the other causes are tried and determined in the court of the said justice.

For less sums, to the Constable

SEC. 4. *Be it further enacted*, That the said plaintiff or plaintiffs, after the return of the writ, executed to the Superior or Inferior Court, as the case may be, shall file his, her or their declaration against the defendant or defendants in attachment, fifteen days before the term at which the said attachment shall be tried, and shall proceed to prove his, her or their debt or demand,

Declaration to be filed

and obtain the judgment of the court as in other cases.

Garnishee to be summoned

SEC. 5. *Be it further enacted*, That the person or persons in whose possession any goods chattels money or effects of the defendant and defendants in attachment, may be or by whom any debt or sum of money may be due and owing to the said defendant or defendants shall be called the garnishee or garnishees, and when the said goods, chattels, money or effects cannot be levied, and taken into possession of the officer, or when the said garnishee or garnishees are only indebted to the defendant or defendants in the attachment, a copy of the writ or attachment shall be served upon the person or persons to be made garnishee or garnishees, with a notice requiring him her or them to appear personally at the term of the court, to which the attachment is returnable there and then to set forth and disclose upon oath, what goods, chattels, money or effects belonging to the defendant or defendants in the attachment, were in his, her or their possession, care, charge, power or control, at the time of the service of the copy of the writ of attachment upon him, her or them : and in what sum or sums of money, he, she or they were indebted to the defendant or defendants in the attachment, at the said time, and if the said plaintiff or plaintiffs in the attachment shall be dissatisfied with the return made by the said garnishee or garnishees, the same may by him, her or them be excepted to in writing, and the said plaintiff or plaintiffs may also file interrogatories to the said garnishee or garnishees, touching the property of the defendant or defendants, in the attachment supposed to have been in the possession of the garnishee or garnishees at the time of the service of the copy of the writ of attachment, or touching the money supposed to have been due and owing by the said garnishee or garnishees, to the said defendant or defendants at the said time, which said interrogatories shall be fully, directly and truly answered in writing, under oath, within fifteen days from the time of the service of a copy thereof, upon the said garnishee or garnishees, and if need be, an issue shall be formed upon the return of the garnishee or garnishees, and the exceptions of the plaintiff or plaintiffs in the attachment thereto, and submitted to a jury, who shall decide between the said parties, and upon the trial of the said issue, the interrogatories filed by the plaintiff or plaintiffs in attachment, if any shall have been filed, and the answers of the garnishee or garnishees thereto, shall be evidence before the jury, and the said parties shall respectively have liberty to intro-

To disclose upon oath

Interrogatories to be filed and served

duce to the said jury any other legal and competent evidence in their power, in support of their respective allegations, and if any garnishee or garnishees shall refuse or fail to make such return as is herein before mentioned, or to answer in manner aforesaid, any interrogatories filed upon exceptions taken to such return, it shall be the duty of the Court in which the proceedings shall be pending, to adjudge that such garnishee or garnishees hath or have in his, her or their possession, goods, chattels money and effects of the defendant or defendants, in the attachment, or is or are indebted to the said defendant or defendants, in an amount sufficient to satisfy the debt, claim or demand of the plaintiff or plaintiffs, in the attachment, and the costs of the suit, and upon such judgment, such execution shall issue, conformably to the manner of issuing executions, in other cases against the body or bodies, lands, tenements, goods, chattels and effects of the said garnishee or garnishees, as might be, & to be proceeded on in the same manner as if judgment had been rendered against him or them, in a suit regularly instituted against him, her or them, and execution thereupon issued.

Judgment vs
garnishee

Executions

SEC. 6. *Be it further enacted*, That service of an attachment upon the lands, tenements, goods, chattels, money, or effects of the defendant or defendants, in attachment, shall bind the property attached, and a judgment obtained therein, shall have relation to the time of the service of the attachment, and the plaintiff or plaintiffs in the judgment upon the attachment shall be entitled to a priority of payment out of the property attached, except as against valid subsisting liens on the same property, at the time of the service of the attachment, and a judgment upon the attachment shall entitle the plaintiff or plaintiffs therein, to execution and satisfaction of, from, and upon any other property of the defendant or defendants in attachment, if the property attached shall be found to be insufficient to satisfy the judgment obtained in the attachment and the plaintiffs costs.

Attachment to
be a lien from
its service

SEC. 5. *Be it further enacted*, That it shall and may be lawful for the defendant or defendants in any attachment to replevy the property attached, and thereby dissolve the attachment by giving good and sufficient special bail, and by entering his, her or their appearance to the action, at any time before the verdict of a jury or the assessment of damages against the said defendant or defendants, and upon such bail being given and perfected as in other cases of bail to the action, and the

Def't may replevy
bv special
bail

payment of all the costs accruing upon the issuing and levy of the said attachment, the property attached shall be restored to the defendant or defendants in attachments.

Garnishee may
replevy by bond

Property to be
appraised

SEC. 8. *Be it further enacted*, That the person or persons in whose possession, power, charge, care or control any property of the defendant or defendants in any attachment, may have been found and levied upon, may replevy the same by giving bond with two or more sufficient securities, in double the value of the property levied upon, payable to the plaintiff or plaintiffs, in attachment, conditioned for the payment of the appraised value of the said property, to the said plaintiff or plaintiffs upon the judgment of the court from which the attachment issued, or to which the proceedings may be removed, according to law, that the said property was and is subject to the plaintiffs attachment. The said appraisement shall be made by three disinterested persons, under an oath that they will appraise the property exhibited to them, to be administered by a justice of the peace, previous to their entering on their duties, one of whom shall be chosen by the plaintiff or plaintiffs, in the attachment, the other by garnishee or garnishees, and the third by the two appraisers so chosen, who shall under an order or warrant of the clerk of the court for that purpose, appraise the said property under the superintendence of the officer who made the levy of it, which appraisement exhibiting every article of the property levied upon, and the appraised value thereof, under the hands of the appraisers, and the officer superintending the appraisement, together with the bond aforesaid, shall be returned to the office of the clerk of the court, from which the attachment issued, after which, and the payment of the costs attending or growing out of the levy of the said property, and the appraisement thereof, by the party replevying the said property, shall be restored to the said garnishee or garnishees.

sale under exe-
cution

SEC. 9. *Be it further enacted*, That all property attached and not replevied, shall after judgment has been obtained by the plaintiff or plaintiffs, in attachment, and executions has been issued thereon, be disposed of, under the said execution, as in other cases of property levied upon and taken in execution.

Perishable pro-
perty

SEC. 10. *Be it further enacted*, That when the property attached shall be of a perishable nature it shall and may be lawful, for the judge or justice who ordered the attachment, in vacation, as well as in term time,

to grant an order for the sale of such property, after such public notice as to the said judge or justice shall seem expedient.

SEC. 11. *Be it further enacted*, That whenever any person or persons who is or are about to institute an action at common law, in any of the courts of this Territory, shall have cause to apprehend, that his, her or their debtor or debtors, or other persons unlawfully converting or detaining his, her or their property, will remove the property of the said debtor or debtors, or the property so unlawfully converted or detained, out of the district or county of this Territory, in which the action is intended to be instituted, before judgment can be obtained therein, and execution levied on the said property, it shall be lawful for any such person or persons to present to any of the judges or justices of the courts of this Territory, a petition declaring that his, her or their debtor or debtors, or the person or persons against whom he, she or they hath or have a claim or demand, in damages, for the unlawful conversion of his her or their property, or the person or persons unlawfully detaining his, her or their property, hath or have property within the district of this Territory, in which the application is made, sufficient to satisfy his, her or their debt or demand, or some part thereof, but that he she or they hath or have good cause to apprehend, and do verily believe that, before a judgment can be obtained, for his, her or their debt or other demand, and execution be levied thereon, the said property, or the property unlawfully detained, will be removed out of the district of this territory within which the action is intended to be instituted, that is to say; out of East Florida if the action is intended to be instituted there, and out of West Florida if the action is intended to be instituted there, and the said petition shall also set forth and shew the nature of the debt or demand of the petitioner, the amount due on the same, claimed in damages, or the description of the property, alledged to be unlawfully detained from the said petitioner or petitioners, which several facts so to be contained in the said petition, shall be severally verified by the affidavit of the party or parties about to institute the suit, or any of them, or by his, her or their agent, which said affidavit may be taken in the same places, before the same officers, mentioned in, and authenticated in the same manner, prescribed by the first section of this act, for the taking and authenticating of the affidavits therein mentioned; upon the exhibition of such petition, of the cause and affidavit to the judge or

Creditors who
fear that debtors
will remove prop-
erty

May petition
County Court

And upon affidav-
it

justice of the court in which the suit is to be instituted, it shall be his duty to order an attachment to issue against the goods, chattels, and effects of the person or persons who is or are to be made defendant or defendants, in the said suit, or so much thereof as will be sufficient to satisfy the debt or demand of the plaintiff or plaintiffs, and the costs of the suit, or against the property so alleged to belong to the said plaintiff or plaintiffs, and to be unlawfully detained, provided the plaintiff or plaintiffs in the action in which the said attachment shall be applied for, shall before the granting the order for the said attachment, have given a bond with two good and sufficient securities to be approved of by the judge or justice ordering the attachment, in double the value of the property to be attached, payable to the defendant or defendants, in the said suits, and conditioned for the prosecution of the said suit of the plaintiff or plaintiffs, to effect, and for the payment of the said defendant or defendants, his, her or their executors and administrators, all damages and costs which shall arise to the said defendant or defendants, by reason of the levying the said attachment, upon his, her or their property, and by reason of the failure to prosecute the said suit of the plaintiff or plaintiffs, to effect: upon the filing the said petition, for the attachment in this section mentioned, and the order for the issuing thereof, with the said bond, in the office of the clerk of the court from which the said attachment is to issue, it shall be the duty of the said clerk to issue an attachment conformably to the provisions of this section of this act; and it shall be the duty of the ministerial or executive officer of the court, from which the said writ of attachment shall issue, to execute the same immediately, by levying upon attaching and taking into his possession, the lands, tenements, goods, chattels and effects of the said defendant or defendants, until the plaintiff or plaintiffs shall have obtained a judgment in the said suit against the defendant or defendants.

SEC. 12. *Be it further enacted*, That property attached under the provisions of the last preceding section of this act, may be replevied at any time before judgment by the defendant or defendants giving bond with two or more good and sufficient securities, in the penal sum of double the value of the property attached, (the said value to be ascertained by appraisement in the manner pointed out by the provisions of this act for the appraisement of the property therein mentioned, at the expense of the party replevying) payable to the plain-

And giving security.

Attachment may issue

Defendant may replevy by bond

tiff or plaintiffs in the suit, his, her or their executors and administrators, and conditioned for the surrender and redelivery of the property replevied, in the same plight in which it was received, to the ministerial or executive officer of the court, in which final judgment in the suit, in which the property shall have been attached, shall be rendered in favor of the plaintiff or plaintiffs therein, whenever the said officer shall demand such surrender, or redelivery, by virtue of an execution under the final judgment against the property of the said defendant or defendants, or for the payment of the said plaintiff or plaintiffs, of the amount of the judgment and costs adjudged and entered up against the said defendant or defendants in the said suit.

GEO. MURRAY,

President of the Legislative Council.

Attested,

F. J. FATIO, Clerk.

Passed by the Council June 27th, 1823.

Rejected by the Governor and passed by the requisite majority of the Council.

AN ACT,

Respecting the probate of wills and the granting of letters testamentary, and letters of administration, and the duties of executors, administrators and guardians.

Be it enacted by the Governor and Legislative Council of the Territory of Florida, That it shall be the duty of the county courts in the several counties of this Territory, in term time, and of the judges of said courts in vacation, to take proofs of all last wills and testaments, and to grant probates, letters testamentary and letters of administration, with or without any will annexed, and ~~to do and perform all matters and things enjoined on said courts, or the judges thereof in relation to the estates of deceased persons.~~

County Courts
to be Courts of
Probate

SEC. 2. *Be it further enacted,* That no person shall be qualified or permitted to act as an executor, executrix, administrator or administratrix, unless he be twenty one years of age or upwards, and in the case of minors being named executors in any last will and testament, the letters testamentary shall be granted to the other executor or executors, if any be named in said will or testament, or if none others be named, letters of

Qualifications of
Ex'rs and Adm'rs

F

administration with the will annexed, shall be granted to the next of kin, or to such other person as the court or judge shall appoint, according to provisions hereafter mentioned, until such minor shall come of full age, when he shall be admitted to act, and be qualified as an executor; in such case the letters of administration, if any shall have been granted, shall be revoked, and the said administrator or administratrix, shall render a true and faithful account of his or her administration to the county court, and surrender the estate to the said executor or executrix.

Probate to be
granted in tes-
tators County

SEC. 3. *Be it further enacted*, That the probate of all wills and letters of administration, shall be granted in the county wherein the testator or intestate died, unless at the time of his or her death, he or she had a mansion house or other place of abode, in some other county, and in such case the probate and letters of administration shall be granted in such other county, and if his or her death take place out of this Territory, and at the time of his or her death, he or she was possessed of any goods, chattels, slaves or lands, in any county of this Territory, the probate of his or her will may be granted in the county where any part of said goods, chattels, slaves or lands may be.

To whom letters
may be granted

SEC. 4. *Be it further enacted*, That letters of administration shall be granted to the representatives of the intestate, who apply for the same, preferring first the husband or wife, and next such others as are entitled to distribution of the estate of the intestate, in the order of consanguinity, and if no such person apply for administration, or if on applying, cannot comply with the provisions of this act, after citation, duly published, for the term of six weeks, once a week in some newspaper printed in the district or jurisdiction, where the intestate died, if any be printed there, and if not, in some newspaper printed in the adjoining district or state, then the said court or judge may grant administration to a creditor of the intestate, or some other fit person—but if any will shall, after granting letters of administration, be produced, and duly proved, the aforesaid letters of administration shall be revoked, and letters testamentary granted to the executors of said will. provided they shall be ready and willing to be qualified, and if not, the letters of administration, previously granted shall stand good, and the will be thereto annexed.

SEC. 5. *Be it further enacted*, That previously to the granting of letters of administration, it shall be the du-

ty of the court or the judge to require the person applying for administration, to state upon oath or affirmation to the best of his knowledge and belief, whether there be any heirs or legal representatives of the intestate, in being or not; which statement shall be in writing, and subscribed by the party making the same, and filed in the clerks office, and such person applying as aforesaid, for letters of administration, shall be also required to state upon oath or affirmation, whether according to the best of his or her knowledge and belief, the deceased died without a will, and to swear or affirm that he will well and truly administer all and singular the goods, chattels, rights and credits of the said deceased, make a just and true inventory of the same, pay his debts, as far as the assets of the estate shall extend, and the law direct, and make a fair distribution according to law—and render a true account of the administration of the estate when thereunto required. All executors taking out letters testamentary on the estates of their testator, and all administrators with the will annexed, shall make oath or affirmation before the court or judge, that they will well and truly perform the last will and testament of the testator, and pay all his just and lawful debts, so far as his goods, chattels, rights and credits will extend, and that they will make a true and correct inventory of the same, and render a true account of their administration when thereunto requested.

Executors oath

SEC. 6. *Be it further enacted*, That the person or persons to whom letters of administration with or without the will annexed, shall be granted as aforesaid, shall be required by the said court or judge to execute and file in the clerks office a bond, with two or more sufficient securities, in such penal sum as the court or judge may deem fit, respect being had to the value of the estate, in the name of the Governor of the Territory or his successors in office, in the manner and form following, to wit: The condition of this obligation is such that, if the within bounden A. B. administrator or administratrix, as the case may be, of all and singular the goods, chattels, rights and credits of C. D. deceased, do make or cause to be made a true and perfect inventory of all and singular the goods, chattels, rights and credits of the said deceased which have or shall come to the hands, possession or knowledge of him the said A. B. or into the hands of any person or persons for him, and the same so made, do exhibit or cause to be exhibited, into the

To give bond

Form of the
"condition"

clerks office of the county court for the county of —
 — at or before the — day of —
 — next ensuing, and all the goods, chattels,
 rights and credits of the said deceased, at the time of
 the death of the said deceased, which at any time after
 shall come to the hands or possession of the said A. B.
 or into the hands or possession of any other person or
 persons for him, do well and truly administer according
 to law, & further make or cause to be made, a true & just
 account of his administration, when requested; and all
 the rest and residue of the said goods, chattels, rights
 and credits, which shall be found remaining, upon the
 said administrators account, the same being first exam-
 ined and allowed by the county court of the county
 where the said administration is granted, and shall deli-
 ver and pay to such person or persons respectively, as
 the said court, by their order or decree, pursuant to the
 true intent and meaning of this act shall appoint and di-
 rect—and if it shall thereafter appear that any last
 will and testament was made by the said deceased, and
 the executor or executors therein named, do exhibit the
 same, into the office of the said court, making request
 to have it allowed and approved, and the said will is al-
 lowed and approved by the said court, then if the said
 A. B. within bounden, being thereunto requested, do
 render and deliver his said letters of administration,
 then this obligation to be void and of no effect, other-
 wise to remain in full force and virtue. And adminis-
 trators with the will annexed, or of goods and chattels
 not administered, shall give a bond with the like secu-
 rity, changing the form of the condition according to
 the nature of the case.

Administrators
 may be appoint-
 ed pending a
 controversy

SEC. 7. *Be it further enacted*, That while any contro-
 versy is pending in regard to any will, or during the
 minority, or in the absence of the executor or executrix,
 the court or judge may grant letters of administration
 during such controversy, minority or absence, or may
 appoint any person or persons to collect and preserve
 the estate of the deceased, and sell any part of the same
 which may be of a perishable nature, until a probate of
 the will or letters of administration be granted, on tak-
 ing bond and security, for administering the estate of
 such testator, well and truly, during the controversy,
 minority or absence of the executor or executrix, or for
 collecting the estate, and making an inventory thereof,
 and safe keeping and delivering of the same, when there-
 unto lawfully requested by the executor or executrix,
 administrator or administratrix duly qualified.

SEC. 8. *Be it further enacted*, That all wills of which probate shall be granted as aforesaid, shall be deposited in the office of the clerk of said county court, and by him fairly and correctly recorded, in a book kept for that purpose, together with the letters testamentary or of administration, granted thereon, and all letters of administration on the goods, chattels, rights and credits of persons dying intestate, shall be also recorded in the office of the said clerk, and on request and payment of his fees, he shall give certified copies thereof, with the seal of the court, which certified copies shall be received in evidence in all the courts of record in this territory, and have the same effect as the originals might or could have, in law or equity, and if any clerk shall deliver such letters testamentary or of administration, without recording the same, he shall forfeit to the party injured double the damages which he may have sustained for default of such record being duly made.

Wills and Letters
to be recorded

SEC. 9. *Be it further enacted*, That copies of all bills, [wills] and of letters testamentary and of administration, heretofore recorded in any public office of record in this territory, when duly certified by the keeper of the said records, shall be received in evidence in all the courts of records [record] in this territory, and the probate of wills granted in any of the United States or the Territories thereof, in any foreign country or state duly authenticated and certified according to the laws of the state or territory, or of the foreign country or state where such probate may have been granted, shall likewise be received in evidence in all the courts of record in this Territory.

Wills heretofore
recorded

SEC. 10. *Be it further enacted*, That the said court or judge on granting letters testamentary, or of administration, shall appoint two or more respectable and discreet persons, not of kin to the deceased, as appraisers of the goods and chattels, rights and credits of the testator or intestate, and shall administer to the said appraisers an oath or affirmation, truly and justly to view and appraise according to the best of their skill and opinion, all the personal estate and slaves of the testator or intestate, which to them shall be produced, or which shall come to their knowledge, and deposit the appraisalment thereof in the office of the clerk of said court.

Court to appoint
appraisers

SEC. 11. *Be it further enacted*, that on the appointment of the appraisers aforesaid, they shall proceed to appraise all the slaves and all the personal property to them produced, and the appraisalment thereupon made is signed by the executor or administrator, may be con-

Appraisalment
may serve as inventory

Provision for widow & children

sidered as an inventory of such part of the estate as had come to his hands or possession. And in all cases where any person dies intestate, leaving a widow or children, such widow or children, shall be entitled to keep her or their wearing apparel, and such household goods and farming utensils, provisions and clothing necessary for their support and maintenance, as the appraisers shall exempt from the inventory, they having special regard to the ability of such widow and children, to provide for and maintain themselves. And it shall be the duty of the court or judge appointing the appraisers as aforesaid, to direct them to make out a list or schedule to be signed by them, of all household goods, farming utensils and provisions and clothing by them exempted from inventory, together with the number of such family, which articles exempted as aforesaid they shall also appraise, and the schedule thereof deposit in the clerks office. And where the intestate leaves a widow, the aforesaid articles exempted from inventory, and appraised, shall be considered and taken as forming a part of the widows dower, or be in lieu thereof, if the same shall amount to one third part of the personal estate of the deceased. And the schedule thereof shall be a discharge of the administrator from being accountable for the goods effects and provisions so exempted as aforesaid.

If the estate be insolvent.

SEC. 12. *Be it further enacted*, That in all cases where the estate shall be insolvent, or indebted to the full amount of the estate, the widow shall be allowed to keep as her absolute property, her implements of industry, such as cards, wheels, spun yarn of every kind, and also all the cloth and clothing made up in the family of the said widow and family for their own use, and also such property, goods, wares and furniture as said widow may think proper, not to exceed the appraised value of one hundred and fifty dollars.

Widow to give a receipt

SEC. 13. *Be it further enacted*, That all executors and administrators, where they have good cause to believe that the estate of the deceased is insolvent, or indebted to the full amount of the same, after it shall be appraised, as required above, shall deliver such articles as above mentioned in this act, to the widow, and take her receipt for the same, which receipt shall be allowed the executors and administrators in their statement of the said articles, and in all cases where it may be found by executors or administrators, after delivering the property, as above described, to the said widow,

that the estate is not insolvent, the said widow shall discount the amount of said receipt, by her given to the executor or administrator, so much of her one third part, or half of the estate of her deceased husband, as the case may be.

Compensation to
appraisers

SEC. 14. *Be it further enacted*, That each appraiser appointed as aforesaid, shall be entitled to receive one dollar per day for his attendance and services, to be paid out of the estate of the deceased.

Inventories to be
filed

SEC. 15 *Be it further enacted*, That all executors and administrators shall file their inventories in the clerks office within two months from the day of their being qualified.

Inventories may
be given in evi-
dence

SEC. 16. *Be it further enacted*, That inventories and appraisements may be given in evidence in any suit by or against the executors or administrators, but shall not be conclusive for or against them, if other testimony be given, that the estate was really worth, or was bona fide sold for more or less than the appraised amount.

Perishable goods
to be sold for
debts

SEC. 17. *Be it further enacted*, That, executors or administrators, whether it be necessary for the payment of debts or not, shall as soon as convenient, after they shall be qualified, sell at public sale all such goods of their testator or intestate, specific legacies excepted, as are liable to perish, be consumed, or rendered worse by keeping, giving such credit as they shall judge best, and the circumstances of the estate will admit of, taking bonds or promisory notes with good security of the purchasers, and shall account for such goods according to the sales; if more be sold than will pay the debts and expenses, the executors and administrators may assign said bonds and notes for the surplus, to those entitled to the estate, and be discharged for so much.

If not sufficient,
other personal
estate

SEC. 18. *Be it further enacted*, That if such perishable goods be not sufficient for the payment of debts and expenses, the executors or administrators shall proceed to sell the other personal estate, disposing of the slaves last, until the debts and legacies be all paid, having regard to the specific legacies, *Provided*, That if any testator direct that his estate shall not be appraised or sold, the same shall be preserved in specie, and an inventory only made thereof, and deposited, unless a sale be necessary for the payment of debts.

Schedule of prop-
erty sold, to be
filed

SEC. 19. *Be it further enacted*, That it shall be the duty of executors and administrators, when they sell the personal property of their testator or intestate, to deliver to the clerk of the court a complete schedule of

Conveyance to
be made by Ex'r

the property sold, signed by the said executors or administrators, or such of them as shall have made the sale, which said schedule shall contain a description of the articles, the names of the purchasers, and the amount, and shall be deposited in the clerks office within sixty days after the said sale shall have been made.

Adm'r to petition
for leave to sell
real estate

SEC. 20. *Be it further enacted*, That the sale and conveyance of lands and tenements, sold in pursuance of any will, shall be made by the executors or such of them as shall undertake the execution of the same, or by the surviving executors, or by the administrator with the will annexed, if no other person be appointed in such will for that purpose, or if the person so appointed shall refuse to perform the trust, or die before he shall have completed the same.

SEC. 21. *Be it further enacted*, That if any person shall die intestate, being owner of lands and tenements, within this territory, at the time of his or her death, but not of sufficient personal estate and slaves to pay his or her just debts, it shall and may be lawful for the administrator to apply by petition, to the county court of the county, where such lands or tenements may lie, for permission to sell the same, or a sufficient part thereof, at public sale, to discharge the debts of the intestate, and upon satisfactory cause shewn, the said court may from time to time, order and direct such sale to be made, *Provided*, that the county court shall make no such order, unless the administrator shall, together with his petition, file a true and just account upon oath or affirmation, of all the debts of the intestate, which shall have come to his knowledge, together with the inventory appraisement and sale of the personal estate.

Sale to be advertised

SEC. 22. *Be it further enacted*, That before any sale shall be made of the lands or tenements of any intestate, in pursuance of the provisions of the preceding section, the said court shall direct that advertisement of such sale shall be posted up at the court house, and at several public inns in the county where the lands lie, for the space of two months, and that such advertisement be also inserted once a week till sold, in some newspaper printed in this territory, in the county nearest to that in which the lands lie, and the administrator after making such sale, shall render an account of the same to the next county court held in the county, where the lands lie, and make oath or affirmation that neither he, nor any person for his use or benefit, became a purchaser of the said lands, and all lands and tenements

sold as aforesaid, shall not be afterwards liable for the debts of the intestate.

SEC. 23. *Be it further enacted*, That the lands and tenements of any testator who shall not have directed the sale thereof, in his will, shall in pursuance of the provisions of the preceding section, be sold under the order of the said court, to pay the just debts of the said testator, and the like proceedings shall take place, as directed in the sale of the lands and tenements, of intestates, *Provided always*, That nothing in this act contained, shall be construed to effect the right any widow may have to dower, in the estate of her dece'd husband.

Lands sold by order of court

SEC. 24. *Be it further enacted*, That no executor or administrator shall be compelled to pay the debts of the testator or intestate, until after the expiration of six months from the taking out letters testamentary or letters of administration, and if any person shall bring any action against any executor or administrator within the aforesaid six months, the plaintiff although he may obtain judgment for the amount of his demand, shall not recover any costs in his suit, nor have execution on his judgment, until after the expiration of the said six months, nor shall any execution issue on any judgment rendered against the deceased, in his lifetime, without being revived by "*scire facias*" nor until after the expiration of the six months as aforesaid.

Ex'rs. not compelled to pay debts until after six months

SEC. 25. *Be it further enacted*, That in all cases where judgment shall be rendered against executors or administrators, to be levied on the goods and chattels of the deceased, no costs shall be recovered.

No costs recoverable from the estate of the dec'd

SEC. 26. *Be it further enacted*, That it shall be the duty of all executors and administrators, on taking out letters testamentary or letters of administration, to cause an advertisement to be published once a week for the space of eight weeks, in some newspaper printed in the county, in or nearest to that wherein the said letters testamentary or of administration if any such paper be printed in this territory, if not, to post up such advertisement on the outer door of the court house, in said county, calling upon all persons who have any demands against the estate of the deceased, to present them without delay to such executors or administrators.

Ex'rs and adm'rs to advertise for demands vs. the estate

SEC. 27. *Be it further enacted*, That executors and administrators shall pay the debts of the deceased in the following order. First, the necessary funeral expenses; next, debts due for board and lodging. during the last sickness of the deceased; next, physicians and surgeons bills. for medicine and attendance during the last sick-

Order of payment

ness of the deceased; next, judgments of record rendered and docketed in this territory during the life time of the deceased, and all debts due to this territory; and finally all other debts, whether by specialty, or otherwise, without any distinction of rank.

Ex'r's bound de
bonis proprias
upon suggesti-
on of a devasta-
vit

SEC. 28. *Be it further enacted*, That when any action shall be brought against any executor or administrator suggesting a "devastavit" if such executor or administrator cannot shew that he has fully administered according to law, he shall be charged of his own estate with the amount of the debt proved to be due from the estate, if assets to that amount be proved to have come to his hands, and not duly administered by him; or so much of said debt as the amount of said assets, not duly administered.

Ex'r. mismanag-
ing estate.

SEC. 29. *Be it further enacted*, That whenever it shall appear satisfactorily to the said court or judges, on petition of any legatee, heir or security, that any executor who has taken out letters testamentary on the estate of any testator, that the said executor is either mismanaging or wasting the estate of the deceased, it shall be lawful for the said court or judge to revoke the said letters testamentary, and to appoint one or more receivers of the said estate, or to require good and sufficient security, by bond, to be filed by the said executors, for the further due administration of said estate, and on petition as aforesaid, whether any mismanagement or waste be charged or not, the said court or judge may order either executors or administrators to file a just and true account of their administration in the clerk's office, within such time, as the said court or judge may direct, from the issuing and service of such order, and whenever it shall be satisfactorily shewn to the court or judge by affidavits or otherwise, that the securities, or any bond given by executors or administrators, are insufficient, the court or judge shall order that additional security be filed, and if not complied with, within such time as shall be directed in said order, the said court or judge may revoke the letters testamentary or letters of administration, and appoint a receiver or other administrator.

Security requi-
red

If security be in
sufficient

Bonds to be deli-
vered by the clk.
to injured party;

SEC. 30. *Be it further enacted*, That all bonds given by executors or administrators pursuant to this act, may be put in suit and prosecuted from time to time, at the suit of the party injured, in the name of the governor of the territory, for the use of the party injured for a breach of said bonds, until the whole penalty in the same be recovered. And the clerks of the said court;

shall deliver to any person on request, and payment of his legal fees, a true copy of any bond given by executors or administrators in pursuance of this act, and such copy certified by the said clerk with the seal of the court annexed, shall be sufficient evidence in any court on any trial that shall be had for the breach of the conditions thereof.

SEC. 31. *Be it further enacted*, That no security for any executor or administrator shall be charged beyond the assets of the testator or intestate, by reason of any omission or mistake in pleading, or for false pleading, of such executor or administrator.

Security not liable by erroneous pleading

SEC. 32. *Be it further enacted*, That executors and administrators shall be allowed in their accounts all reasonable charges and disbursements, which they shall lay out and expend in funeral expenses of the deceased, and in their administration of the estate, and may be allowed a just and fair compensation for their services, not exceeding six per cent. on the whole amount of the personal estate, and not exceeding one per cent on the money arising from the sale of lands and slaves, except as herein otherwise provided, where there are no heirs or legal representatives.

Compensation to Executors

SEC. 33. *Be it further enacted*, That executors administrators and guardians may by leave of the court, retain in their possession the money of any minor, paying for the same lawful interest, or shall under the direction of the Court. put out the money of the minors at interest, upon such mortgage security as said court shall allow, and if such security be taken *bona fide*, and without fraud, and shall happen to prove insufficient, it shall be the loss of the minor, but if no good security can be found, on which to put out the said money at interest, the said executor, administrator or guardian shall only be responsible for the principal. *Provided*, That the day of payment of the money so to be put out at interest, at any time, shall not exceed one year from the date of the obligation or other security given for the same; and also that at the end of each year the interest due, if not paid, be made principal, and a new bond or obligation be taken; and where the executor administrator or guardian retains the money on interest himself, the same rule shall be observed, the interest being added to the principal annually. But executors, administrators and guardians shall not be liable to pay interest except on the surplus of the estate of the deceased, remaining in their hands, and unemployed, as aforesaid, after the settlement of their accounts,

Executors may retain money of Minors by paying interest

Proviso

which settlement they are hereby required to make once a year before the court.

To give notice of settling accounts

SEC. 34. *Be it further enacted*, That when any executors, administrators or guardians, shall make a settlement of their accounts before the courts as aforesaid, it shall be their duty at least two months previously to presenting their accounts and vouchers to the court, to give notice by written advertisement, posted up at the outer door of the Court house, and also at two public inns in the county where the court is to be held before which their accounts and vouchers are to be presented, of their intention to present their said accounts and vouchers; and no account or settlement shall be made or allowed by the court, unless such notice shall have been given as aforesaid, and it shall be the duty of the court to make such settlement with such executors, administrators and guardians as herein directed.

Judges may compel a settlement by attachment

SEC. 35. *Be it further enacted*, That the judges of the County Courts of this Territory respectively, shall have power to award process to cause to come before them all and every such person, who as executors, administrator, guardian, tutor, trustee or otherwise are or may be concerned and entrusted, or in any wise accountable for any estate real or personal, belonging to any orphan or any person under age, to cause them to make within a reasonable time, true and perfect inventories of said estate, and render just and true accounts of the same; and if any person entrusted as aforesaid, shall neglect to account to said court as aforesaid, the court shall immediately issue an attachment against such person, to be executed by the Sheriff of the county where such person may live, to be returned by the Sheriff together with the delinquent, who shall pay all the costs of the attachment.

Legacies or distribution payable after six months

SEC. 36. *Be it further enacted*, That no legacy or distribution shall be required of any executor or administrator until the expiration of six months from the taking out of letters testamentary or letters of administration, nor shall executors or administrators be compelled to pay legacies, or make distribution until bond and security be given by the person entitled to the same, to refund a due proportion of any debts or demands which may afterwards appear against the estate, and all costs which may be awarded on the same, *Provided*, That such debt or demand shall appear within two years after granting the letters testamentary, or letters of administration.

SEC. 37. *Be it further enacted*, That all debts and demands of whatsoever nature, against the estate of any testator or intestate, which shall not be exhibited within the said two years, shall forever afterwards be barred, *Provided*, That the executor or administrator shall by an advertisement to be published once a week for the space of four weeks, in some newspaper printed in this Territory, and also in some newspaper printed in a neighboring state, give notice to all creditors, legatees and persons entitled to distribution, that their claims and demands will be barred at the expiration of the period aforesaid, unless exhibited within the same, saving however to married women, infants, persons of unsound mind, imprisoned or beyond the limits of the boundaries of the United States, or out of the limits of this Territory, in the military or naval service thereof, during war, the said term of two years after their respective disabilities shall be removed, to exhibit their respective demands to said executors or administrators.

Debts barred in
two years

Notice to be given

SEC. 38. *Be it further enacted*, That if any executor or Administrator, guardian or trustee, shall receive and give discharges, for any debts, rents, duties or sums of money, belonging to any orphan or minor, for whom the said executor, administrator, guardian or trustee was entrusted, all such discharges and receipts shall be binding upon the orphan or minor, and his heirs when he shall come to full age, and shall be effectual in law to discharge the person taking the same. *Provided* however, that nothing herein contained shall discharge the executor, administrator, guardian or trustee from accounting to the orphan or minor, where such receipt or discharge shall not have been legally given, or given for a fraudulent purpose.

Ex'r's discharge
to be binding

SEC. 39. *Be it further enacted*, That the lands and tenements of every person dying intestate, in this Territory, as well as the personal estate of such person, if he leaves no lawful heir or heirs, after all legal debts and expenses shall be paid, shall become the property of the Territory, and if any person shall administer on the said estate, he shall be considered as a trustee of the same for the use of the Territory.

Estate of Intes-
tates without
heirs to escheat

SEC. 40. *Be it further enacted*, That it shall be the duty of such administrator, immediately on taking out letters of administration on any estate, where it is generally believed and reported that the deceased left no lawful heirs, to cause to be published a notice in some newspaper printed in the territory, and one or more of the neighboring states, and continued for the same for

Notice to be published

Proceeds to be
paid into the
Treasury

six weeks, containing the name of the intestate, and as near as may be a description of his person and of the place where he died, or was known to reside, and also a statement of the appraised amount of his estate; and it shall be the duty of such administrator, after the expiration of one year from the time of taking out letters of administration, if no heir or legal representative shall appear, to pay into the Treasury of the Territory, under the direction of the County Court, where letters of administration shall have been granted, all the proceeds of the personal estate of such intestate, retaining ten per cent. for his personal trouble, in administering said estate, together with all actual disbursements by him necessarily made, in and about the administering of said estate. And it shall be the duty of the said court, in directing the proceeds of said estate to be paid into the Territorial Treasury, on payment of the same, to cause an entry to be made of record, specifying the amount so paid into the Treasury, and also the name of the intestate and of the administrator, together with a copy of the notice published as hereinbefore directed, and the said court shall thereupon discharge such administrator of the amount so paid, together with the ten per cent. allowed him, and the necessary disbursements as aforesaid.

Real estate to be
sold;

Notice to be giv-
en

SEC. 41. *Be it further enacted*, That when any intestate shall have died seized or possessed of any real estate in this Territory, it shall be the duty of such administrator, at the expiration of two years, if no heir or legal representative shall appear, to apply to the county court, where such estate may lie for an order for the sale of such estate; and upon the production by the administrator of the letters of administration, and a copy of the notice published as hereinbefore directed, together with a certificate from the court from whence said letters of administration issued, under the seal of said court, (if any other than the court from whence said letters of administration issued) certifying that the said estate is such as comes within the purview of the thirty ninth section of this act; to order the sale of such real estate, to be made on some day of a succeeding term of said court, at the court house door, after advertising said sale in some public newspaper printed in this Territory and for at least three weeks next preceding the day of sale, and posting up said advertisement for the same space of time at the court house door.

SEC. 42. *Be it further enacted*, That on the sale of such estate as aforesaid, it shall be the duty of such ad-

ministrator to give a credit of one year to the purchaser who shall be the highest bidder, upon such purchaser giving bond with security approved by the administrator, for the payment of the purchase money; and it shall be the further duty of such administrator upon the sale of such estate, to execute to the purchaser a deed conveying all the right title and interest which said intestate had in the said estate, which deed shall be acknowledged before the County Court of the County where the estate shall lie; and it shall be the further duty of such administrator to pay into the Territorial Treasury all the proceeds by him received, on the sale of such estate, in the same manner as directed in the fortieth section of this act, retaining for his trouble the same compensation as therein allowed, on the whole proceeds of such sale, together with all necessary disbursements by him actually made, in and about the selling of such estate; *Provided*, That no administrator on said estate, shall either directly or indirectly become the purchaser of the whole or any part of the land or tenements sold by virtue of this section, and when the said administrator shall give a deed for said lands so sold, he shall make oath or affirmation that he is neither directly nor indirectly interested in the purchase of said land or tenements or any part thereof.

Purchaser to have credit

Proviso

SEC. 43. *Be it further enacted*, That if any heir or legal representative of any intestate within the meaning of this act, shall appear and prove his right to the estate after the payment of the proceeds thereof into the Territorial Treasury as aforesaid, the court shall order the money so paid into the Treasury forthwith to be reimbursed to said heir or legal representative, out of the Territorial Treasury.

Heir appearing

SEC. 44. *Be it further enacted*, That if any person or persons shall feel aggrieved by any definitive order, judgment or decree of the County Court, with respect to any matter relating to the administration of the estate of any deceased person, it shall be lawful for the person so aggrieved to appeal from the said order, judgment or decree to the Superior Court, which appeal upon security given as in other cases, shall be allowed accordingly; and such appeal shall be a superseas to all further proceedings in the Court below, until the same be determined.

Party aggrieved may appeal

SEC. 45. *Be it further enacted*, That when any person shall die intestate, and there be no relations of the deceased in the County, the Court, or Judge in vacation, shall appoint a curator to take charge of the estate of

Curator to be appointed in certain cases

the deceased, until letters of administration be granted, and if said Court or Judge do not appoint a curator, the sheriff shall "ex officio" take possession of the goods and chattels of the deceased, and be accountable for the same to the administrator when appointed, and shall make an inventory of the same, and deposit said inventory in the clerks office of said court.

Clerks may act
in the absence of
Judges

SEC. 46. *Be it further enacted*, That the clerks of the said County Courts respectively, in the absence, sickness or other disability of the Judges of said Courts, are hereby authorised and empowered to discharge the duties appertaining to said Judges, in regard to the probate of wills, granting letters of administration and letters testamentary, and making the necessary orders in regard to the custody, preservation or sale of the estates of deceased persons, subject to revocation or confirmation by the said Court or Judges.

Residue of pro-
perty to be dis-
tributed

SEC. 47. *Be it further enacted*, That after all debts and legacies have been paid, the property remaining in the hands of the executor or administrator shall be distributed according to the provisions of the law regulating descents.

GEO. MURRAY,

President of the Legislative Council.

Attested,

F. J. FATIO, Clerk.

(Approved 29th June 1823.)

WM. P. DUVAL.

Governor of the Territory of Florida

AN ACT,

To incorporate the Charitable Society in the City of St. Augustine

Society incorpo-
rated

Be it enacted, by the Governor and Legislative Council of the Territory of Florida, That Joseph M. Hernandez, Bernardo Segui, Francisco Medicis and the other officers and members of the society known in this city, by the name of the Charitable Society, shall be and are hereby declared to be a body politic and corporate, in name and in deed, by the style of "The Charitable Society," and by the said name and style shall have perpetual succession of officers and members, and a common

seal to use, and shall have full power to make, alter, amend and change such bye laws as may be agreed upon by the members of the same : *Provided always*, That such bye laws be not repugnant to the constitution of the United States, or the laws of this Territory.

SEC. 2. *Be it further enacted*, That they shall have full power and authority, under the style and name of the "Charitable Society," to take hold and enjoy real and personal property, *Provided always*, That the amount of such property shall not exceed the value of five thousand dollars, in addition to the property now owned by said society; to sue for and recover, all such sums of money as now are or hereafter may become due to the said society, in any court of law, or tribunal having jurisdiction thereof; and the rights and privileges of the said society, in any court or in any tribunal, to defend and also to receive take and apply bequests and donations, as may be made to and for the use and purposes intended by the said institution, and shall be and are hereby declared to be vested with the powers and advantages, privileges and immunities of a society of people incorporated for the relief of the indigent sick and shipwrecked mariners.

Limitation of capital.

GEO. MURRAY,

{ President of the Legislative Council.

Attested,
F. J. FATIO, Clerk,

[Approved July 3d, 1823.]

WM. P. DUVAL,

Governor of the Territory of Florida.

AN ACT,

Assigning duties to the Marshals of the United States for the Territory of Florida.

Be it enacted by the Governor and Legislative Council of the Territory of Florida, That the Marshals of the Territory aforesaid, in addition to the duties assigned them by the laws of the United States, shall be the executive officers of the Territorial branch of the Superior Courts within their respective districts; that in exercising the authority aforesaid, the said Marshals shall perform all the duties and be subject to all the penalties and responsibilities imposed on the sher-

Marshal to be executive officer of Sup'r Court

iffs, by the laws of this Territory, and the common and statute laws of England, so far as the same may be applicable.

his compensation SEC. 2. *Be it further enacted*, That for the performance of the duties aforesaid, the said Marshals shall be entitled to receive such compensation as may be established by the Acts of the Legislative Council.

Proviso SEC. 3. *Be it further enacted*, That in case of the death, resignation, inability or refusal of the Marshals to perform the duties hereby assigned them, then and in that case the Governor shall be and is hereby authorised and empowered to assign said duties to the executive officers of the county courts within their respective counties.

To take an oath and give bond SEC. 4. *Be it further enacted*, That previous to the entering on the duties hereby assigned them, the said Marshals shall take an oath faithfully to perform the duties of their offices without partiality, favor or oppression, and shall execute bond in the office of the Secretary of the Territory, or at such other place as the Governor shall direct, with the security to be approved of by the Governor in the penal sum of five thousand dollars, conditioned for the true and faithful performance of the duties assigned them by this act, which said bond shall not be void on payment of the penalty, but shall remain in full force and virtue, and the said Marshals and their securities shall be liable to the suit of all persons sustaining injury by their failure or neglect of duty.

To have custody of prisoners SEC. 5. *Be it further enacted*, That the Marshals shall have custody of all prisoners hereafter confined by the laws of this Territory, and all prisoners now in confinement, together with the commitments or which they have been imprisoned, and all business confided to the sheriffs of the several counties of this territory, emanating from the Marshals [Superior Courts] of their respective districts; *Provided*, That nothing in this act contained shall be so construed as to prevent the sheriffs from completing the service of all process, in civil cases, which has heretofore been issued to the said sheriffs and now depending in the Superior Courts of their respective districts, and the said sheriffs shall receive all fees of office to which they may be entitled by law for

their services in completing the service and return of such process.

GEO. MURRAY,
President of the Legislative Council.

Attested,
F. J. FATIO, Clerk,

(Approved June 29th 1823,)

WM. P. DUVAL,
Governor of the Territory of Florida.

AN ACT,

Regulating Executions.

Be it enacted by the Governor and Legislative Council of the Territory of Florida, That all persons recovering any debt, damages or costs by the judgment of any court of record within this Territory, may at their election, prosecute writs of fieri facias or capias ad satisfaciendum, for taking the goods and chattels, lands, tenements or the body, of the person or persons, against whom such judgment has been obtained, in the manner following : all writs shall be in the name of the Territory of Florida, and be attested by the clerk of the court from which they are issued, and shall be returnable fifty days from the date thereof.

Form of execution

SEC. 2. *Be it further enacted,* That when any execution has been issued and not returned satisfied, the party at whose suit it issued shall have power to take out another execution at his own costs, and when upon a ca. sa. the sheriff or other officer shall return that the defendant or defendants is or are not found, the plaintiff or plaintiffs may sue out a fieri facias or another ca. sa. and where part of the debt is made, the party may take out execution for the residue.

If not returned satisfied alias may issue

SEC. 3. *Be it further enacted,* That all writs of fieri facias issued from the Superior Courts of this Territory, shall and may be executed within the extent of the jurisdiction of said courts respectively, and all writs of fieri facias issued out of the county courts shall be executed within the said counties respectively; but in case any fi. fa. issued in one county be returned without full satisfaction thereon, the plaintiff or plaintiffs may have execution directed to the sheriff of any other county in

May be served within the jurisdiction of the Court

which there may be any property of the defendant or defendants, and a levy may be made thereon, and the property sold as in other cases of execution.

Estate real and
personal bound
by judgment

SEC. 4. *Be it further enacted*, That the goods and chattels lands and tenements of the defendant or defendants, shall be found [bound] by the judgment of the court, and after the rendition of said judgment all subsequent sales, mortgages or incumbrances shall be void, and the first judgment shall be first satisfied.

Form of levy

SEC. 5. *Be it further enacted*, That in levying execution the officer shall observe the following course, first to levy on the goods and chattels, excepting slaves, and if none are to be found then upon the slaves, and finally on the lands and tenements; that whenever any lands or tenements are levied on, the defendant may surrender personal property in lieu thereof, and the officer may take the same in execution; and when any goods and chattels shall be taken in execution, the officer making the levy shall advertise the said goods and chattels for public sale, to take place at the expiration of twenty days from the time of making the levy, the advertisement of the sale shall be posted upon the outer door of the court house, in the county where the levy shall have been made, and also at some public inn in said county, and shall likewise be published in some newspaper, if one be published in said county; and when any levy shall have been made on any lands or tenements, they shall be advertised as aforesaid, once a month for the space of four months from the time of the appraisalment of the same, as hereafter mentioned, before any sale of said lands or tenements shall take place, and when any slave or slaves are levied on, it shall be in the power of the defendant to retain such slave or slaves in his or her possession, by giving bond with approved security for the return of such slave or slaves on the day of sale, which bond shall have the effect of a judgment, and if such slave or slaves are not returned on the day of sale, the plaintiff shall have execution against the goods, chattels, lands and tenements of the defendant, and his securities, and the same may be levied on and sold at ten days notice, any thing to the contrary in this act notwithstanding; and where any slave or slaves are thus taken by the defendant, such slave or slaves shall be advertised once a month for two months, in some newspaper printed in the county, and if no newspaper be printed in the county, they shall be advertised at the court house door for the space of two months previous to the day of sale,

Deft may retain
slaves by giving
bond

SEC. 6. *Be it further enacted*, That whenever any levy shall be made on any lands or tenements in virtue of any execution issuing out of any court of record of this Territory, before any sale shall take place of said lands and tenements, they shall be duly appraised by three appraisers in the manner following, to wit : the Judge of the court from which the execution shall have been issued, shall either in term time or vacation on the application of the party at whose instance the execution has been levied, appoint five discreet and disinterested freeholders of the county or district in which the levy shall have been made, the names of the persons thus appointed shall be written on separate pieces of paper of the same size, and put into a box, and the Sheriff, Marshal, or other executive officer of the court, shall, in the presence, and under the direction of the judge, by whom the appointments have been made, proceed to draw from the box the names of the persons thus appointed, and the three persons whose names are first drawn from the box, shall be the appraisers of the property levied on, which said appraisers thus appointed, shall be sworn or affirmed, before the said judge or any other judicial officer of the Territory, truly and faithfully to appraise the said lands or tenements at the just value thereof, in money, at the time of such appraisement according to the best of their knowledge and belief, and thereupon they shall forthwith as soon thereafter as practicable, proceed to make the appraisement, which they shall put down in writing, specifying the quantity and quality of the lands and tenements, appraised as nearly as the same can be ascertained, and the said appraiser, shall sign seal and deliver the said appraisement to the clerk of the court, wherein the execution issued, and if the said appraisers fail or neglect to make the appraisement, and file the same as aforesaid, within thirty days from the day of their being all qualified for that purpose, without good cause shewn to the court from which the execution issued, they or each of them, failing or neglecting as aforesaid, shall be fined at the discretion of the court in a sum not exceeding twenty dollars. for the use of the county, for such delay or neglect, and shall moreover forfeit all compensation for the services by them performed, in said appraisement, and if the said appraisers shall neglect or refuse to appraise, or return the appraisement, it shall be the duty of the judge of the court or of the clerk to appoint three appraisers in the manner hereinbefore directed, who shall proceed to appraise as before directed and after

Lands to be appraised

Appraisers how appointed

Their duty

Penalty for neglect

appraisement made, when the lands and tenements levied upon, shall be exposed at public sale, if they do not bring two thirds of their appraised value, no sale shall take place, but in that case the party plaintiff shall be at liberty to take them at the said two thirds of their valuation, in discharge of the execution or so much of said property as will satisfy the same, but if the said plaintiff should not choose to take said property, it shall be again advertised for sale during the period of six weeks, and after the expiration of the said six weeks the said property shall be exposed to sale and struck off to the highest bidder, or so much thereof as shall be sufficient to satisfy said execution, with all the costs of appraisement and advertising, and should the said property sell for a larger sum of money than will satisfy the said execution and costs as aforesaid, the residue thereof shall be delivered by the sheriff or other executive officer of the court to the defendant or defendants.

Duty of Sheriff

SEC. 7. *Be it further enacted*, That whenever a sale shall be made of any lands, tenements or slaves, in virtue of an execution as aforesaid, the sheriff or other officers charged with the execution, shall on payment of the purchase money, execute a deed of conveyance, or bill of sale for the same, and in like manner, he shall execute a deed of conveyance of any lands or tenements taken by the creditor at two thirds of their appraised value, agreeable to the provisions of this act.

Sheriff to execute conveyance

SEC. 8. *Be it further enacted*, That the appraisers appointed by virtue of this act, to appraise any property under execution, shall receive each two dollars per day, in full compensation for their services, to be taxed in the bill of costs against the party defendant.

Compensation to appraisers

SEC. 9. *Be it further enacted*, That when an execution has been levied in less than ten days before the return day, the Marshal, sheriff or other officer charged, shall return the same and take out a *venditioni exponas*, and proceed to sell at public auction the goods and chattels, lands and tenements so taken according to the provisions of this act.

Venditioni exponas

SEC. 10. *Be it further enacted*, That no execution shall issue from the clerks office, until ten days after the adjournment of the court from whence it emanates, unless the party or his agent or attorney make oath that he she or they believe the defendant will depart from the Territory; and it shall be lawful for the defendant to execute a recognizance or replevin bond, with approved security before the clerk of the court in which judg-

Defendant may replevy by bond to the clerk

ment has been rendered, previous to the issuing of the execution and before the sheriff or other officer, after execution issued, for the faithful performance of their obligation, and true payment of the sum for which judgment has been rendered with costs and interest sixty days thereafter, which said bond shall be filed by the clerk, and have the force and effect of a judgment, and should the said party and his security fail to pay the money, at the end of sixty days, it shall be the duty of the clerk, to issue an execution against the defendant and his security or securities, and deliver the same to the sheriff of his county or other officer, and it shall be the duty of the sheriff or other officer to whom the said execution shall be directed, to levy on the property of the party and his security or securities, and proceed to sell the same according to the provisions of this act.

Or to the Sheriff

SEC. 11. *Be it further enacted*, That if the Marshal, sheriff or other officer shall fail or refuse to pay over any money collected by him to the plaintiff or plaintiffs, his, her or their agent or attorney, within twenty days after the same shall have been collected, he shall be liable to pay the same, and a penalty of twenty per cent. damages, to be recovered by motion, on giving ten days notice to said sheriff or other officer, before the next court, after the said neglect or refusal of said sheriff or other officer.

Officer failing to pay over money

SEC. 12. *Be it further enacted*, That when any ca. sa. has been levied on the person of a debtor, he may release his body by surrendering property sufficient to satisfy the execution aforesaid with costs.

Def't may release his body by delivering property

SEC. 13. *Be it further enacted*, That if any person or persons taken or charged in execution, shall enter into bond with good and sufficient security, under reasonable penalty, to be determined by the marshal, sheriff or other officer, in whose custody he or they may be, upon condition that he or they shall not depart or go out of the bounds of the prison, to which he or they shall be committed, it shall be lawful for the marshal, sheriff or other officer, to permit him or them to go out of the prison prescribed by law.

Def't may have the liberties of the prison by giving bond

SEC. 14. *Be it further enacted*, That no female shall be imprisoned for debt in this Territory.

No female to be imprisoned

SEC. 15. *Be it further enacted*, That no sale shall be made by sheriffs or marshals, of property taken under execution, but on the first Tuesday in each month, between the hours of ten and two in the day, and in the front of the court house, and the advertisement of any sale shall comprehend a full and complete description

Sh'ff's sale to be made on the first Tuesday of month

of the property, and the name of the defendant, and the name of the person in whose possession the property may be. *Provided nevertheless*, that a sale may be made on any other day or place, by consent of the defendant, and *Provided* the sheriff or marshal give the plaintiff ten days notice of such sale; and any sale may be postponed from day to day.

GEO. MURRAY,

President of the Legislative Council.

Attested,

F. J. FAPIO, Clerk.

(Approved June 28th, 1823.)

WM. P. DUVAL,

Governor of the Territory of Florida.

AN ACT,

To incorporate Floridian Virtues Lodge, No. 28, in the city of St. Augustine.

Be it enacted by the Governor and Legislative Council of the Territory of Florida, That Squire Streeter, Antonio Alvarez, and John Whalton, the present officers and their successors and others who are or may hereafter become members of Floridian Virtues Lodge, in the City of St. Augustine, shall be and are hereby declared to be a body corporate and politic, in name and in deed, by the style of "Floridian Virtues Lodge" and by the said name and style shall have perpetual succession of officers and members, and a common seal to use; and shall have full power to make, alter, amend and change such bye laws as may be agreed upon by the members of the same; *Provided always*, that such bye laws be not repugnant to the constitution of the United States or the laws of this Territory.

Sec. 2. *Be it further enacted*, That they shall have full power and authority, under the style and name of "Floridian Virtues Lodge," to take, hold and enjoy real and personal property to sue for and recover all such sum or sums of money as now are or hereafter may become due to the said Lodge, by any name or style whatever, in any court of law, or at any tribunal having jurisdiction thereof, and the rights and privileges of the said Lodge, in any court, or at any tribunal whate-

Lodge incorporated

Limitation of capital

ver to defend : and also to receive, take and apply bequests or donations, as may be made to and for the uses and purposes intended by the said institution, and shall be and are hereby declared to be vested with the powers and advantages, privileges and emoluments [immunities] of a society of people incorporated to the purpose and intentions of their laudable institution.

GEO. MURRAY,

President of the Legislative Council.

Attested,
P. J. FATIO, Clerk.

(Approved July 2d, 1823.)

WM. P. DUVAL,

Governor of the Territory of Florida

AN ACT,

For preventing and avoiding fraudulent Conveyances.

Be it enacted by the Governor and Legislative Council of the Territory of Florida, That every feoffment, gift, grant, alienation, bargain, sale, conveyance, transfer and assignment of lands, tenements, hereditaments, slaves and other goods and chattels, or any of them, or any lease, rent, use, common or other profit, benefit or charge whatever, out of lands, tenements, hereditaments, slaves or other goods and chattels, or any of them, by writing or otherwise, and every bond, note, contract, suit, judgment and execution, which shall at any time hereafter be had, made, or executed, contrived, or devised, of fraud, covin, collusion or guile, to the end, purpose or intent, to delay, hinder or defraud creditors or others, of their just and lawful actions, suits, debts, accounts, damages, demands, penalties or forfeitures, shall be from henceforth, as against the person or persons or body politic or corporate, his, her or their heirs, successors, executors, administrators and assigns, and every of them, so intended to be delayed, hindered or defrauded, deemed, held, adjudged & taken, to be utterly void, frustrate and of none effect ; any pretence, colour, feigned consideration, expressing of use, or any other matter or thing to the contrary, notwith-

Conveyances
with intent to
defraud creditors

Void

Proviso

standing ; *Provided* that the foregoing section of this act, or any thing therein contained, shall not extend to any estate or interest in lands, tenements, hereditaments, leases, rents, uses, commons, profits, goods or chattels, which shall be had, made, conveyed or assured, if such estate or interest shall be upon good consideration, and bona fide lawfully conveyed or assured to any person or persons, or body politic or corporate, not having at the time of such conveyance or assurance to them made, any manner of notice or knowledge of such covin, fraud or collusion, as aforesaid, any thing in the said section to the contrary thereof notwithstanding.

Conveyance with
intent to defraud
purchasers

SEC. 2. *Be it further enacted*, That every feoffment, deed, conveyance, mortgage, grant, charge, lease, transfer, assignment, estate, incumbrance, interest and limitation of use or uses, of, in or out of any lands, tenements, or other hereditaments whatsoever, which shall at any time hereafter be had, made, executed or contrived, for the intent and purpose of defrauding and deceiving such person or persons, bodies politic or corporate, as shall afterwards purchase the same lands, tenements and hereditaments, or any part thereof, or any estate, interest, rent, profit, right or commodity, in, to, or out of the same, or any part thereof, so formerly conveyed, granted, leased, charged, transferred, assigned, incumbered or limited in use, shall be deemed adjudged, taken and held, as against the person and persons, bodies politic and corporate, their heirs, successors, executors, administrators and assigns and against all and every person and persons, lawfully having or claiming by, from, through or under them, or any of them, who shall have so purchased for money or other good consideration, the same lands, tenements, hereditaments or any part thereof, or any estate, right, interest, profit, benefit or commodity, in, to or out of the same, to be utterly void, frustrate and of none effect ; any pretence, feigned consideration, or expressing of use or uses, to the contrary notwithstanding ; *Provided*, that nothing in this section of this act contained shall extend or be construed to impeach, defeat, make void or frustrate, any conveyance, assignment of lease, assurance, grant, charge, lease, estate, interest or limitation of use or uses, of, in, to or out of any lands, tenements or hereditaments, which shall be made upon and for good consideration, and bona fide, to any person or persons, bodies politic or corporate ; any thing in this section of this act to the contrary notwithstanding.

Void

Proviso

SEC. 3. *Be it further enacted*, That if any person or persons shall make any conveyance, gift, grant, demise, charge, limitation of use or uses, or assurance, of, in or out of, any lands, tenements or hereditaments, with any clause, provision, article or condition of revocation, determination or alteration, at his, her or their will or pleasure, of such conveyance, gift, assurance, grant, demise, charge, limitation of use or uses, contained in the same, or in any other writing whatever, of, in or out of the said lands, tenements, or hereditaments, or any part or parcel of them; and after such conveyance, grant, gift, demise, charge, limitation of uses or assurance so made or had, shall or do bargain, sell, demise, grant, convey, transfer, or charge the same lands, tenements, or hereditaments, or any part or parcel thereof, or any estate, right or interest in the same, to any other person or persons, bodies politic or corporate, for money or other good consideration, (the said first conveyance, assurance, gift, grant, demise, charge or limitation, not being revoked, made void or altered according to the power and authority reserved or expressed, in and by the said first conveyance, or other writing) that then the said former conveyance, assurance, gift, grant, demise, charge or limitation, as touching the said lands tenements and hereditaments, any estate, right or interest in the same, so afterwards bargained, sold, granted, conveyed, demised, transferred or charged, as against the said bargainees, vendees, grantees, leasees and every of them, their heirs, successors, executors, administrators and assigns, and as against all and every person and persons who shall or may lawfully claim, by, through, from or under them, or any of them, shall be deemed taken and adjudged to be void and of none effect.

Conveyance with clause of revocation

Void upon subsequent sale

SEC. 4. *And be it further enacted*, That where any loan of goods and chattels shall be pretended to have been made to any person with whom, or those claiming under him, possession, shall have remained for the space of five years, without demand made and pursued by due process of law, on the part of the pretended lender, or where any reservation or limitation shall be pretended to have been made, of a use or property, by way of condition, reversion, remainder or otherwise, in goods and chattels, the possession whereof shall have remained in another, as aforesaid, the same shall be taken as to the creditor and purchasers, of the persons aforesaid, so remaining in possession, to be fraudulent within this act, and that the absolute property is with the possessor, unless such loan, reservation or limitation

Goods lent with intent to defraud

Property to be deemed with the possessor

on, of use or property, were declared by will or deed in writing, proved and recorded as aforesaid.

GEO. MURRAY,

President of the Legislative Council.

Attested,

F. J. FATIO, Clerk.

(Approved June the 28th, 1823.)

WM. P. DUVAL,

Governor of the Territory of Florida.

AN ACT,

To provide for the remuneration [remuneration] of such persons as have paid taxes under the late revenue laws of this Territory.

Collectors of taxes to make return

Be it enacted by the Governor and Legislative Council of the Territory of Florida, That the officers of the Territory aforesaid, charged with the collection and receipt of public money, by the late revenue laws of this Territory, shall on or before the twentieth day of August next, make out and transmit to the Governor of this Territory, a report in writing, of all public monies by them received and disbursed, accompanied with the vouchers on which such receipts and disbursements have been made.

territorial officers to transmit accounts to the governor

SEC. 2. *Be it further enacted,* That all the officers of the Territory who have performed the services required of them by the late revenue laws of the Territory aforesaid, and who have not received the compensation allowed them by law, for such services, shall make out their accounts for the services by them performed, duly certified, and transmit them to the Governor on or before the twentieth day of August next.

Collectors to refund

SEC. 3. *Be it further enacted,* That all the officers of the Territory, having in their possession any sum or sums of money, collected by virtue of the late revenue laws of this Territory, after deducting all fees allowed them by law, shall on the application of the persons from whom the same shall have been collected, or on the application of the agent, attorney or legal representative of such persons, repay the said sums of money respectively, to the person or persons from whom the same shall have been received.

SEC. 4. *Be it further enacted,* That if the money remaining in the possession of the revenue officers of the

Territory, shall be insufficient for the purposes aforesaid, then and in that case, the Governor shall be and he is hereby authorised out of any public money which may hereafter be received in the Territorial Treasury, and not otherwise appropriated, to reimburse all persons who have paid taxes under the late revenue laws of this Territory.

If not sufficient
to be paid from
the treasury

GEO. MURRAY,
President of the Legislative Council.

Attested,
F. J. FATIO, Clerk,

(Approved 28th June 1823)

WM. P. DUVAL,
Governor of the Territory of Florida.

AN ACT,

For the benefit of honest insolvent debtors, and to protect creditors against the frauds of dishonest insolvents.

Be it enacted by the Governor and Legislative Council of the Territory of Florida, That if any person shall be arrested and imprisoned for debt or damages, on any process, whether original, mesne or final, issued from any court of record in this Territory, and such person shall not have the means at command to pay such debt or damages, it shall and may be lawful for such person or his attorney, to present a petition to the judge of the Superior or County Court of the County or District where the debtor may be imprisoned, stating in said petition the arrest and imprisonment of the debtor, and at whose suit or suits, and for what sum or sums, accompanying said petition with an affidavit of the debtor, that he has not the means at command to discharge the said suits against him, and also with a schedule of all his property, real and personal, and all his rights and credits, in law or equity, and of the debts due by him, and the amount of each, setting forth also the amount of any money in his possession, power or control, and the names of the persons and their place of residence to whom he is indebted, as far as he can ascertain said debts, and the persons to whom he is indebted, and take and subscribe the following oath—I, A. B. do in the presence of Almighty God, swear or affirm (as the case

Imprisoned debtors may petition the judge

And upon filing a schedule of his effects upon oath

Form of oath

may be) protest and declare, the schedule now delivered to, and by me subscribed, doth contain to the best of my knowledge, a full, just, true and perfect account and discovery of all the estates, goods and chattels unto me, in any wise belonging; and such debts as are to me owing, or to any person in trust for me, and of all securities and contracts whereby any money may hereafter become payable, or any benefit or advantage may hereafter accrue to me, or to my use, or any person or persons in trust for me, and that I nor any person in trust for me, have no lands, money, stock, or other estate, real or personal, in possession, reversion or remainder, of the value of the debt or debts, with which I am charged in execution, and that I have not, directly or indirectly sold, lessened or disposed of, in trust, or concealed, all or any part of my lands, goods, stock, debt, money or estate, whereby to secure the same, or receive or expect any profit, or to deceive or defraud any creditor or creditors, or since my arrest and imprisonment to give a preference to any of my creditors. And in the aforesaid schedule of the property of the said debtor, he shall make a separate and distinct list of the tools and implements of his trade or profession, if he have any, and his military accoutrements in the militia, and of his necessary beds and bedding, and the necessary wearing apparel of himself and his family, stating the number of persons composing his family, and if he be a house keeper his necessary cooking utensils, and two tables, six chairs, six plates, six cups and saucers, and half a dozen knives and forks, if he have those articles, may be included in said list, and all the aforesaid articles which may be contained in said list, shall be exempt from the assignment, hereinafter mentioned to be made.

SEC. 2. *Be it further enacted*, That on the presenting of said petition, with the schedule as aforesaid to the judge; he shall make an order for the appearance of the debtor before him, on some future day, not less than six days from the day of granting said order, a copy of which order, together with a copy of the petition, and schedule as aforesaid, the said debtor shall cause to be served on each of his creditors, his, her or their agents or attorneys, at whose suit he may be imprisoned; and the said creditors, in person or by attorney, may attend before the judge on the day appointed for the appearance of the debtor, and on his appearance the judge shall administer an oath or affirmation to him, that he will true answers make to all questions which

Judge may appoint a day for the hearing

shall be put to him in relation to his property, credits, debts and money, whereupon any of the creditors of the said debtor, or their attorneys may examine the said debtor concerning those matters, and produce testimony before the judge, to disprove the correctness of the schedule of the said debtor, or his declarations, in regard to his property, credits, debts and money—if after the examination of the debtor as aforesaid, or if no opposition be made to his discharge, the judge shall be satisfied that there has been no fraudulent concealment or wilful misrepresentation of the property, credits, debts or money of the debtor in the said schedule, the judge shall direct an assignment to be made by the debtor, of all his property, real and personal, and of his credits as aforesaid, with the exception of the list of necessary articles for the use of his family, and his tools and implements, and military accoutrements aforesaid, to one or more fit and discreet persons as assignees, in trust, for the benefit of all the creditors of the said debtor, whether they shall have commenced suits against him or not, and upon the execution of the said assignment, the said judge shall grant a discharge of the debtor from his arrest and imprisonment in the suits on which he is detained, and which discharge shall operate, and be an effectual bar forever afterwards, against any personal arrest or detention of the debtor, for, or on account of the demands on which said suits were brought: *Provided nevertheless*, that if any of the creditors of the said debtor, previously to the assignment being made, as aforesaid, shall allege fraud in the schedule of the said debtor, and shall demand a jury to try the question of fraud, and whether the said debtor is entitled to his discharge, the judge shall not make the order for the assignment or grant the discharge of the debtor, until a jury shall have allowed the same; upon the demand of jury as aforesaid, the judge shall issue a *venire facias* to the sheriff, to summon eighteen lawful jurors, returnable on some certain day, not less than three days from the issuing of the same, and when the panel of the said jurors shall be returned, their names shall be written on ballots and folded up, and put in a small box or some other convenient thing, from whence twelve ballots shall be drawn to form the jury, but if there be not a sufficient number in the whole, to complete the jury, no talesman shall be called, but a new *venire facias* shall be issued, returnable on some subsequent day, not more than six days, next ensuing, and it shall and may be lawful for the judge, in such

If no fraud appear prisoner may assign his effects

And be discharged

If fraud be alleged a jury may be called

case, to impose a fine, not exceeding three dollars, on any juror duly summoned as aforesaid, and failing to attend; when a jury shall have been formed, they shall be sworn or affirmed, well and truly to try the question of fraud on the part of the debtor, and a true verdict give, whether the said debtor be entitled to his discharge or not, and if the verdict be for the discharge of the debtor, upon his executing an assignment of his property as aforesaid, the judge shall grant his discharge, which shall have the like operation and effect as provided in the preceding section of this act, but if the verdict shall be against the discharge of the debtor, he shall not be discharged by the judge; and in all cases the plaintiff who shall have requested a jury, shall pay the costs arising in consequence of their being summoned, but if the verdict shall be against the discharge of the debtor, the plaintiff shall have judgment and execution, for the amount of said costs.

At the cost of the
Pl'tff in execution

SEC. 5. *Be it further enacted*, That if any debtor against whom execution shall have been taken out, shall have remained in prison, or within the rules, bounds or limits of the debtors jail, on such execution, for the space of sixty days, without petitioning for his discharge as aforesaid, it shall and may be lawful for any creditor, at whose suit the said debtor shall be charged in execution, to apply to the judge of the Superior or County Court aforesaid, on giving five days previous notice, to the debtor, of such intended application, for an order directing the debtor to appear before the said judge, on some subsequent day, at least ten days from the date of said order, and to produce a schedule of his property, money, credits and debts, as hereinbefore directed, and the said judge is hereby required to grant such order; and if such debtor on due service of a copy of the said order, shall fail to appear, he shall be deprived of the benefit of the limits, bounds or rules of the debtor's jail, and upon the order of the judge, directed to the sheriff or other officer of the court, whence the execution issued, on which the debtor is detained, the said debtor shall be committed to close confinement until he shall comply with the order for appearance as aforesaid; but if the said debtor shall appear in pursuance of said order, and produce a schedule as hereinbefore required; before his examination takes place, he shall make an assignment of his property and credits, excepting the articles before mentioned, as exempt from assignment, to one or more assignees, to be appointed by the judge, and the like rules and regulations

Imprisoned debtors who neglect to apply

May be required to make an assignment

shall be observed in regard to his discharge, and the decision of a jury if required by the creditor, as hereinbefore mentioned. And if the judge or the jury, if the question be submitted to them, decide against the discharge of the debtor, his assignment shall nevertheless remain in full force and virtue, but he shall not thereafter be deprived of the benefit of the limits, bounds, or rules of the prison.

SEC. 4. *Be it further enacted*, That it shall be the duty of the assignees, appointed in virtue of this act, forthwith to collect the debts due to the insolvent, and dispose of his property, real and personal at public auction, advertising the same, at least three weeks before the sale, unless any of the property shall be of a perishable nature, in which case it may be sold immediately on giving three days notice, by advertisement at the court house, or the most public place in the neighborhood.

Assignee to sell effects and collect debts

SEC. 5. *Be it further enacted*, That immediately on their appointment, the assignees shall give public notice, in some newspaper, printed within the district where the insolvent shall have been imprisoned once a week for the space of four weeks, to the creditors, to present and verify their demands against the insolvent; and within six months from the time of their appointment, the said assignees shall make an equal dividend of the proceeds of the property of the insolvent and his credits, which shall come to their hands, among the creditors, who shall have proved their debts, in proportion to the amount of the same respectively—and at the end of twelve months, the said assignee shall make a final settlement of the estate, by selling publicly, the remaining property and credits of the insolvent, and paying the dividends as aforesaid, and the said assignees in their accounts, shall be allowed all reasonable expenses in and about the administration of the estate of the insolvent, and a commission of five per cent. for their trouble.

Notice to be given to creditors.

SEC. 6. *Be it further enacted*, That whenever any sole assignee appointed in virtue of this act, shall die, or be unable from sickness, absence or other cause to perform the duties herein enjoined, on application to the judge of the Superior or County Court, he shall appoint some other fit and discreet person to supply the place of such assignee—and no assignee appointed in virtue of this act, shall be permitted to resign his trust without making a settlement of his accounts, with the estate of the insolvent, and obtaining the consent of the judge.

Assignee may not resign

Justice of the peace to have the same authority within their jurisdiction

SEC. 7. *Be it further enacted*, That if any debtor shall be imprisoned on any execution, issued by any justice of the peace, in this Territory, it shall and may be lawful for such debtor to present a petition to the same justice of the peace, or in his absence to some other justice of the peace, with a schedule of the property of the said debtor, conformably to the provisions of this act, giving due notice of the presenting of said petition to the creditor or creditors, at whose suit or suits the said debtor is imprisoned, and submitting to an examination upon oath, as herein before directed; the said justice if satisfied that there is no fraud in the said schedule, or the statements of the said debtor, shall direct an assignment of his property, with the exceptions hereinbefore mentioned to the creditor or creditors, at whose suit or suits the said debtor shall be charged in execution, for the exclusive benefit of such creditor or creditors, to the extent of their executions, on making said assignment the said debtor shall be forthwith discharged from said execution or executions; but the creditor or creditors at whose suit the debtor shall have been arrested, may require a jury to be summoned, whose duty it shall be to try and determine the case submitted to them in the same manner as hereinbefore provided.

Property afterwards acquired not exempted

SEC. 8. *Be it further enacted*, That nothing in this act contained shall be so construed as to exempt the property acquired by any debtor, subsequently to his discharge, or which may have been concealed from his creditors, or omitted in the schedule at the time of his surrender, except such articles as may be exempt in virtue of any of the provisions of this act, from liability to any creditor for any debt, damages or balance due therein, although said debt may have been contracted, or said damages incurred, previously to the discharge of said debtor.

Prisoner who has the liberties, having money &c.

SEC. 9. *Be it further enacted*, That whenever any plaintiff in execution, has reason to believe that any defendant against whom he has obtained an execution, who has been arrested thereby, and who has the benefit of the prison bounds or limits, has received or has been in the enjoyment or use of any money or property, of any kind whatever, subsequently to his arrest under said execution, which might and ought to have been applied to the payment of the judgment, under which the said defendant is in execution, it shall be lawful for such plaintiff to apply to the judge of the court from which the said execution issued, in term time, or in vacation,

by a petition setting forth, that he has reason to believe that the said defendant has since his arrest, under the said execution, received or been in the enjoyment or use of money or property, which might or ought to have been applied to the payment of the judgment under which the said defendant is in execution. which petition may also contain interrogatories to the defendant, and upon such petition being presented, the said judge shall order the defendant to appear before him, on a certain day, and at a certain place to be named therein, not more than ten days from the granting said order, then and there to file his answer on oath to the petition and interrogatories, if any, of the plaintiff in execution, and it shall be lawful for the said plaintiff and defendant to support their petition and answer respectively, by competent evidence, and upon the grant of any such order, the judge shall award a *venire facias*, for a jury conformably to the provisions of this act, and the said jury under the direction of the court, as to matters of law, shall either find that the defendant has received or been in the enjoyment or use of property (specifying the amount of money or the property) since his arrest, which might and ought to have been applied to the discharge of the plaintiff's judgment, or they shall find that he has not done so—if the said jury shall find that the said defendant has received, or been in the enjoyment or use of any money or property which might and ought to have been applied as aforesaid, or if the defendant in execution shall fail to file his answer as aforesaid, the judge shall forthwith cause the said defendant to be committed to close confinement, and the said defendant shall not be released from said confinement, or be entitled to the benefit of the prison bounds, until the said money or property so found to have been received, enjoyed or used by him, be applied to the payment of the execution, under which he is in custody; *Provided always*, that the jury in making up their verdict, on cases provided for by this section of this act, shall make a reasonable allowance for the support of the defendant in execution, and of his wife and children if he has any. And it is hereby declared that the provisions of this section and of this act, shall apply to all defendants who are now in execution, upon any judgment or decree of any of the former courts of this Territory, or of the Superior Courts thereof, or of any of the former justices of the peace of this Territory, in the same manner as they are intended to apply to cases which may hereafter occur—and whenever any person shall be

May be compelled to pay it

Reasonable allowance to be made for family expenses

in arrest, under an execution issued from the former county or circuit courts of this Territory, application may be made to the judge of the County or Superior Court of the District in which the defendant is in custody, and whenever any person shall be under arrest under an execution issued from a justice of the peace, who is no longer in office, application may be made to any other justice of the peace of the county, or to either the judge of the County or Superior Court of the District in which the defendant may be under arrest, and the proceedings authorised by this section may be had and taken in the same manner as if execution had originally issued from said justices, County or Superior Court.

GEO. MURRAY,

President of the Legislative Council.

Attested,

F. J. FATIO, Clerk.

(Approved 5th July 1823.)

WM. P. DUVAL.

Governor of the Territory of Florida.

AN ACT,

To amend an act entitled "an act, concerning guardians and wards, masters and apprentices."

Be it enacted, by the Governor and Legislative Council of the Territory of Florida, That the judges of the several county courts of this Territory, any three of the justices of the peace of their respective counties being present, and concurring therein, shall have power to take cognizance of all matters concerning orphans and their estates, and to appoint guardians in cases where it appears necessary and proper, and shall take good security of all guardians, appointed by them, for the estates of orphans committed to them, and if any of the said judges and justices shall fail to take good security from such guardian, they shall be individually liable for any loss from insufficient security, to be recovered by action of debt, in any court of record in this Territory, *Provided* it shall appear that at the time such security was taken, it was insufficient; *Provided however,* That fathers may appoint guardians for their children,

County Courts to
have charge of
orphans & their
estates

by deed in writing, or last will and testament, during any part of the infancy of the child, and such appointment shall give the guardian the same power over the child, and shall subject him to the same liability as is and shall be directed by law.

SEC. 2. *Be it further enacted*, That so much of the act to which this is an amendment, as may be inconsistent with the provisions of this act, shall be, and the same is hereby repealed.

Former provisions repealed

SEC. 3. *Be it further enacted*, That the second, third and fourth sections of the act, to which this is an amendment, shall be and the same are hereby continued in force.

Others continued in force

GEO. MURRAY,

President of the Legislative Council.

Attested,

F. J. FATIO, Clerk.

Approved June 29th 1823.

WM. P. DUVAL,

Governor of the Territory of Florida.

AN ACT,

To regulate the driving or bringing into the Territory of Florida, neat cattle, belonging to persons, citizens of the several states.

WHEREAS, a practice hath hitherto prevailed of driving large quantities or stocks of neat cattle into this Territory, from the several adjoining states, by the citizens thereof—and *whereas*, it is consistent with justice and good policy, that all persons who enjoy the benefits and advantages of a state or territory, should contribute and share with the good people thereof the expense and labour in supporting and defending the same;

Preamble

Be it therefore enacted by the Governor and Legislative Council of the Territory of Florida, That from and after the passing of this act, it shall be the duty of any person or persons, driving or bringing into this Territory any stock or quantity of neat cattle, to go before a justice of the peace in the county in which such neat cattle may be introduced, and make a return on oath to the said justice of the peace, stating the actual number of neat cattle, so by him or them brought in, and also whether the said neat cattle are the *bona fide* property of him or them; and in case they should be found to be

Citizens of other states to pay a tax on cattle

the property of any person, not an inhabitant of this territory, shall pay to the said justice of the peace the sum of twenty five cents for each and every head of neat cattle so brought in; a certificate of which from the said justice, shall authorise them to remain in the territory aforesaid, until the first day of January next thereafter.

To make a return of their number

SEC. 2. *And be it further enacted*, That if any person introducing neat Cattle the property of non residents as aforesaid should refuse to make return thereof or to pay the aforesaid sum of twenty five cents for each and every head so by him or them brought in, it shall be the duty of any justice of the peace, if within his jurisdiction, on proof thereof, to award judgment, and issue execution for the same, and if not within the jurisdiction of a justice of the peace, any other court having competent jurisdiction thereof.

Tax to be assessed annually

SEC. 3. *And be it further enacted*, That not exceeding twenty five cents for each and every head of neat cattle, which now are, or hereafter may come into this Territory, the proprietors of which are non residents, shall be assessed annually, at the discretion of the county court,

Penalty for neglect to make return

SEC. 4. *And be it further enacted*, That, should any person who may be the agent or manager of any person or persons, not inhabitants of this Territory, neglect or refuse to make a just and true return of all neat cattle which may be in his possession or care, as agent or manager as aforesaid, shall upon due proof thereof, before any court having competent jurisdiction, be fined not exceeding one hundred dollars, at the discretion of the court. And the cattle belonging to non residents which may be found in this Territory, shall always be subject to be levied on and sold, to pay the fines and penalties which may be assessed on them, or on persons for neglect or refusal to make returns as aforesaid.

SEC. 5. *And be it further enacted*, That nothing herein contained shall prevent the inhabitants or persons actually removing into this Territory, from bringing in as many cattle as they may think proper, their own *bona fide* property, without any charge or expense, any thing herein contained to the contrary notwithstanding.

SEC. 6. *And be it further enacted*, That all monies assessed under, and by virtue of this act, shall be collected under the direction of the county court, be con-

sidered as part of the county funds, and applied to county purposes.

GEO. MURRAY,
President of the Legislative Council.

Attested,
F. J. FATIO, Clerk.

Approved June 29th, 1825.

WM. P. DUVAL.
Governor of the Territory of Florida.

AN ACT

To regulate proceedings in Chancery in the several Courts in Florida.

Be it enacted by the Governor and Legislative Council of the Territory of Florida, That the Superior and County Courts of Florida shall always be open for the issuing and return of process, making, hearing and deciding motions, presenting, arguing and deciding upon petitions, granting injunctions and passing interlocutory orders and decrees.

Sup'r & County
Courts

SEC. 2. *Be it further enacted,* That the form of a subpoena and [to] answer, shall be as follows :

Territory of Florida to _____ greeting,
You are hereby commanded and strictly enjoined that, laying all other business aside, and notwithstanding any excuse, you personally be and appear before the judge of our _____ Court, for the District or County of _____ (as the case may be) on the _____ day of _____ wherever the Courts may then be, to answer to a bill of complaint exhibited against you in our said courts by _____ and to do further, and receive what our said courts shall have considered in that behalf, and this you are not to omit, under a penalty of five hundred dollars. Witness, the honourable _____ Judge of said Court, the _____ day of _____ in the year of _____

Form of Subpoena

A. B.

SEC. 3. *Be it further enacted,* That the names of the defendant or defendants, however numerous they may be, may be inserted in one subpoena, and that the service thereof, may either be by a delivery of a copy thereof to such defendant, shewing the original at the

Form of service

time of such delivery, or to the wife of such defendant, or any white person above the age of fifteen years, residing in his or her family, at the time of such delivery at the dwelling house or usual place of abode of such defendant; and such service shall be made before, or on the day to which the process is made returnable; that the court from which the subpœna has issued, the title of the cause and the words "copy of subpœna" together with the name of the plaintiff's solicitor, shall be inscribed on the back of the copy of the subpœna, which may be so served, and when such service shall be made by the ministerial officer of the court from which the subpœna issued, it shall be his duty to note in writing in the original subpœna, the time at which it came to his hands, and when served, the time and manner of the service thereof, which note shall be subscribed with his name and office. When service of process is made by any other person, other than the sworn officer of the court whence it issued, affidavit of the time and manner of the service must be made and returned in the original subpœna, and it shall be the duty of the ministerial or executive officers of the several courts of this territory, to make return of all process placed in their hands, and of their proceedings thereon, immediately after the service or execution thereof.

Return days of process

SEC. 4. *Be it further enacted*, That the first day of every term, and the first Monday in every month shall be the days to which process shall be made returnable; and when the process is returnable out of term, and shall have been served, the defendant or defendants shall cause his, her or their appearance to the subpœna to be entered in the office of the clerk of the court from which it issued, on or before the first Monday in the month next succeeding the month in which the process was returnable, to a term, and when the process is returnable to a term of the court, and shall have been returned served, the defendant or defendants shall cause his, her or their appearance to be entered on or before the first Monday of the month, next after that in which the process was returnable, *Provided*, three weeks shall have elapsed from the return day thereof, and if not, then on the first Monday of the following month.

Alias may issue.

SEC. 5. *Be it further enacted*, That if process shall not be returned, it shall be the duty of the clerk of the court from which such process issued, to issue other similar process, if the same shall be required by the party at whose instance the process originally issued.

SEC. 6. *Be it further enacted*, That whenever it shall be made to appear by affidavit to any of the judges of the aforesaid courts, that process has been issued against any defendant, and has been returned not executed, and that the said defendant is within the district of the Territory in which the court issuing the process is held, but that the said defendant cannot be found, or will not suffer service of process to be made on him or her, it shall and may be lawful for the said judge, from whose court the process issued, to grant an order requiring the said defendant to appear and answer the complainants bill, within four weeks, which order shall be published once a week during the said four weeks in some newspaper printed in the district in which the court which grants the order is held, or if there be no newspaper published, then a copy of the said order shall be posted up at the court house of the district or county in which it was granted, for the above space of four weeks; upon the publication or posting up, in manner aforesaid, the said order, and at the expiration of two months from the termination of the above four weeks, if the defendant shall not have appeared and answered the complainants bill, the said complainant may enter in the common rule book, at the clerks office, an order that the complainants bill be taken *pro confesso*, having first obtained the said order from the judge, upon proof of the publication or posting up as aforesaid, of the order for appearance and answer.

Process returned
"not found"

Order to file
bill *pro confesso*

SEC. 7. *Be it further enacted*, That whenever it shall be made to appear by affidavit to the judge of the court, in which a bill shall have been filed, that any defendant therein, resides out of the district of the territory in which the bill is filed, an order requiring such defendant to appear and answer, otherwise the complainants bill shall be taken *pro confesso*, shall be published in any newspaper printed in the District of this Territory, in which the bill is filed, for the time herein prescribed, that is to say, if the said defendant resides in this Territory, but not in the district in which the bill is filed, for two months, if in any other part of the United States for four months; if in any of the West India islands, for six months; and if in Europe for nine months; which publication shall be made when the defendant resides in the United States, once a week; and when he or she resides out of the United States once a month during the periods above prescribed; if no paper be published in the district in which the bill is filed, publication of the aforesaid order shall be made in any other

Def't residing
out of the dis-
trict

Advertisement
to be published

Def't not appearing, bill taken "pro confesso"

newspaper published in the state adjoining the district in which the bill shall be filed; in which last case, in addition to such publication, the said order to appear and answer, shall be posted up at the court house, in which the Superior Court for the said district holds its session; and a copy of such order having been published in the manner and for the time prescribed by law, and one month having expired of the time thereby limited for appearance, and answer by the defendant, upon proof thereof, by affidavit to the judge of the court in which the bill is filed, an order that the complainants bill may be taken *pro confesso*, shall be granted and entered in the common rule book kept by the clerk, and the complainant may either have the matter of his said bill decreed, or he may obtain a commission or commissions for taking testimony, and have a decree upon his bill as confessed, and the testimony adduced by him in the same manner as if the cause was at issue.

SEC. 8. *Be it further enacted*, That the return of process executed, shall be sufficient whereon to ground any subsequent proceedings.

Pl'tff may examine witnesses

SEC. 9. *Be it further enacted*, That if a defendant shall not file his or her answer within three months from the return of the subpœna executed, the complainant may either proceed on his bill as confessed, or have a commission or commissions to take testimony; or he may move the court for an attachment, which shall be granted, to bring the defendant in to answer the charges and interrogatories contained in his bill, at his election; and may proceed in the two last cases, as if the answer had been filed, and the cause was at issue; *Provided always*, That the court in its discretion for cause shewn, may allow the answer of the defendant to be filed, and grant a further day for the hearings; and when a party is in custody on such attachment, he or she shall be detained in custody, until he or she shall file his or her answer, or be discharged by the court or the judge thereof,

Def't may plead, answer or demur

SEC. 10. *Be it further enacted*, [That] the defendant may at any time before the bill is taken for confessed, or afterwards, with the leave of the Court, demur or plead to the whole bill or part of it, or he may demur to part, plead to part and answer the residue thereof; in such manner as is authorised by the practice of the high Court of Chancery in England, and by the rules of practice for the courts of equity of the United States, under the authority of the act of congress of eighth May 1792.

SEC. 11. *Be it further enacted*, That the complainants shall put in the general replication, or file exceptions to the defendants answer, and notice thereof served upon him or his solicitor, and no special replication to an answer shall be filed, but by leave of the court, or the judge thereof, for cause shewn.

No special replication

SEC. 12. *Be it further enacted*, That every defendant may swear to his or her answer, before any judge or justice of the United States, or judge or justice of any court of any of the United States or Territories of the United States, or of any justice of the peace or Notary Public of any of the said states or territories, or of this territory,

SEC. 13. *Be it further enacted*, That the complainant may amend his bill at any time before answer, plea or demurrer filed, of course, and without costs; but if the defendants appearance be entered, and the defendant hath procured a copy of the bill, the complainant shall furnish the defendant with a certified copy of the amendment *gratis*, but no amendment in a matter of substance shall be allowed, as of course, to any bill which has been sworn to.

Compl't may amend his bill

SEC. 14. *Be it further enacted*, That if a plea or demurrer has been overruled, no other plea or demurrer shall thereafter be received, but the defendant shall answer the plaintiffs bill, and if he fail to do so within one calendar month thereafter, the same or so much thereof as was covered by the plea or demurrer may be taken for confessed, and the matter thereof be decreed accordingly.

Plea overruled

SEC. 15. *Be it further enacted*, That the plaintiff may set down a demurrer or plea to be argued, or he may take issue upon the plea; if upon an issue the facts stated in the plea be determined for the defendant, they shall avail him as far as in law and equity they ought to avail him; if a plaintiff shall not reply to, or set for hearing any plea or demurrer, and give notice thereof to the defendant or his solicitor, one calendar month before the second term of the court, after filing the same, the bill may be dismissed with costs, and the defendant may in all cases, instead of filing a formal plea or demurrer, insist on any special matter in his answer, and have the same benefit thereof, as if he had pleaded the same matter or had demurred to the bill.

Form of pleading

SEC. 16. *Be it further enacted*, That if an answer shall be considered insufficient, the complainants solicitor may file exceptions thereto, at any time within three weeks from the notice of the filing thereof, in the

If answer be insufficient

clerks office ; and enter a rule with the clerk, that the defendant make a better answer within six weeks, notice of which rule and of the filing the exception shall be served upon the defendant or his solicitor, and if the defendant shall insist on the sufficiency of his answer, or shall neglect or refuse to put in a sufficient answer, the complainant may set down his exceptions for argument at the next term, and if they are sustained, no further or other answer shall be received but on payment of costs, and if a second answer put in, be adjudged insufficient, the defendant shall pay double costs, and the defendant may also in such case, be examined on interrogatories, and committed till he or she sufficiently answer them, or the plaintiff may move the court to take so much of the bill as is not answered for confessed, and may file his replication, obtain commissions for testimony and proceed to hearing in the usual manner.

Clerk to keep a
rule-book

SEC. 17. *Be it further enacted*, That rules to plead, answer, reply, or setting the cause for hearing, and other proceedings not particularly mentioned in this act and all proceedings before mentioned in it, shall be entered in a rule book, to be kept by the clerks of the court for that purpose, and notice of the entry thereof, shall be served on the solicitors of the parties if there be any employed, and if not, upon the parties respectively.

Aged or infirm
witnesses

SEC. 18. *Be it further enacted*, That after any bill filed, and before the defendant has answered, on oath made that any of the complainants witnesses are aged, infirm, or are going out of the jurisdiction of the court, or that any of them is a single witness to a material fact, the clerk of the court in which the bill is filed, may issue a commission to any justice of the peace of the territory for taking the examination of such witness or witnesses *de bene esse* the party desiring such commission, giving reasonable notice to the adverse party of the time and place of taking such examination, if such adverse party or parties shall be known to the complainant, and the examination taken as aforesaid, shall be certified by the officer who shall have taken it, and be returned sealed up, to the office of the clerk who issued the commission.

SEC. 19. *Be it further enacted*, That for the purpose of compelling the attendance of witnesses who reside within this Territory, a subpoena shall issue under the seal of the court with a blank for the names of the witnesses, to be filled up by the party procuring the same, as occasion may require, requiring the witnesses to at-

tend before the justice or commissioners at such time and place as the said justice or commissioners shall appoint, for the purpose of giving evidence in the cause therein described; and a memorandum in writing subscribed by the said justice or commissioners, or one of them, designating the time and place where the said justice or commissioners shall attend, or meet for that purpose, being left with the witness at the time the subpoena shall be served on him, shall be sufficient to compel the attendance of such witness at the time and place designated; in like manner as if the said time and place had been designated in the said subpoena, or to incur a contempt if he does not attend accordingly.

Process of subpoena to testify

SEC. 20. *Be it further enacted*, That commissions may issue in term time or vacation, to take testimony of witnesses residing out of the territory, by any two or more persons named in the commissions by the order of the court or the judge thereof in vacation, *Provided*, That not more than four persons shall be named therein, two of whom may be named by the complainant, and two by the defendant; all the testimony taken under a commission to be executed out of the territory, shall be taken in interrogatories, and cross interrogatories, filed in the clerk's office, and a copy thereof served upon the solicitor of the opposite party, if there be one employed, if not, upon the party himself, and the party upon whom or upon whose solicitor a copy of the said interrogatories shall be served, shall have ten days from such service in which to file cross interrogatories, and if cross interrogatories be not filed within ten days, the commission may issue for the taking the testimony upon the direct interrogatories; the copy of the interrogatories shall be accompanied with notice of the name, residence and occupation, if it be known, of the witness or witnesses to be examined, and also of the name residence and occupation, if it be known, of the person or persons who are to be proposed to the court or judge as commissioners on the part of the party for whom the testimony is to be taken, and when the opposite party files his or her cross interrogatories, they shall be accompanied with the names, residence, and occupations of the persons to be proposed by him or her as commissioners; all testimony taken *viva voce*, in open court, shall be taken down in writing at the time by the clerk.

Commission to take testimony

SEC. 21. *Be it further enacted*, That no subpoena shall issue but upon bill filed, nor shall any writ of injunction or ne exeat be granted, but upon a bill filed, except in the special cases, and for the special or similar cau-

Practice on in-
junction and ne-
gociat

ses authorised by the practice of the high courts of Chancery in England, and no writ of injunction to stay proceedings at law, shall be granted, but upon motion to the court or judge, and reasonable notice thereof to the opposite party or his attorney; and the defendant may as well before as after, answer on due notice to the complainant, upon the matters of the bill, and move the court or the judge thereof, in vacation, for a dissolution of the injunction.

Injunction after
verdict at com-
mon law

SEC. 22. *Be it further enacted*, That no injunction shall issue to stay proceedings at law after verdict or inquest of damages, unless the party applying therefor shall have previously paid all the costs of the suit at law, and shall have entered into a bond with two or more sufficient sureties, in double the amount of the verdict at law, payable to the plaintiff in the action at law, and conditioned to pay the said plaintiff, the amount of the verdict, inquest or judgment at law together with ten per cent. on the same, if the said injunction shall be dissolved, or the bill upon which it may be granted, shall be dismissed; and no injunction to stay proceedings at law, before verdict or inquest of damages shall issue, unless the party applying shall have previously paid all the costs in the suit at law, and shall with two good and sufficient securities have entered into a bond in double the amount or value of the property, if personal, really in controversy to the plaintiff, in the action at law, and conditioned to pay to the said plaintiff all damages, losses, expenses and charges which he may really have sustained, or have been put to by reason of the issuing of the said injunction, if the injunction shall be dissolved or the bill on which it was granted shall be dismissed.

Form and effect
of a decree

SEC. 23. *Be it further enacted*, That every final decree shall be made up and engrossed by the clerk of the court, and be signed by the judge of the court in which it was pronounced, at any time upon request of the party plaintiff or his solicitor, after the expiration of thirty days from the time of pronouncing the decree, unless it shall have been appealed from, or a petition for a rehearing have been presented, within the said thirty days, and no process shall be issued, or other proceedings had, on any final decree or order, until the same shall have been engrossed and signed as aforesaid, and filed in the clerk's office, and every final decree or order of any of the courts of this Territory, in any suit or proceeding in equity, which shall direct the payment of money, either absolutely or conditionally, shall have the

same binding effect upon the property of the party, against whom such decree or order shall have been pronounced, from the time of the filing thereof in the clerks office, engrossed and signed, as a judgment at law has by law.

SEC. 24. *Be it further enacted*, That a petition for a rehearing regularly presented within thirty days from the time of pronouncing the decree, shall prevent the issuing of process, until the prayer of the said petition shall be determined on, and such petition shall be determined on at the term of court in which the decree was pronounced, if it can be done, if not, within thirty days from the time at which the petition was presented: every petition for a rehearing shall contain the special matter or cause, on which such rehearing is applied for, and the facts therein stated, if not appearing on the face of the proceedings, shall be verified by the oath of the party or of some other credible person; after a rehearing shall have been granted, no farther or other proceedings shall be had or taken on the decree pronounced on the original hearing of the cause.

Rehearing

SEC. 25. *Be it further enacted*, That from any and every final decree pronounced in the county courts of this territory, an appeal may be taken as a matter of right and of course, to the Superior Court of the district in which it was pronounced, and every appeal taken according to the provisions of this act, from any such decree, shall operate as a supersedeas and stay all proceedings upon the decree appealed from—that an appeal shall be taken by filing in the office of the clerk of this [the] court in which the decree was pronounced, a written memorandum that the cause was carried to the superior court by appeal, by paying all the costs which have accrued in the county court, and giving notice of the appeal to the opposite party or his solicitor, all which to entitle the party to his appeal, must be done within thirty days from the day in which the decree in the county court was pronounced. No appeal shall be taken from a decree of any of the said county courts, which order and direct the payment of money, either absolutely or conditionally, unless the party desiring to appeal from such decree shall within the aforesaid thirty days enter into a bond with two good and sufficient securities, in a sum double the amount of the money directed or ordered to be paid by the decree: which bond shall be payable to the opposite party and shall be conditioned for the payment to such opposite party, of the sum or sums of money decreed by the county court

Decrees in county court may be appealed from

Upon giving security

to be paid, together with ten per cent. damages on the amount so decreed to be paid, and all the costs of the appeal, in case the said appeal shall not be prosecuted to effect, or shall be dismissed, or the decree of the county court shall be confirmed by the superior court; and no appeal which shall be taken or entered otherwise than according to the aforesaid provisions, shall stay the issuing of process, on the taking any other necessary proceedings upon any final decree of the said county courts, or any of them, or be valid to any other purpose whatsoever. It shall be the duty of the clerk of the court from which the appeal shall be taken, to endorse on the memorandum of the taking of the appeal, the time of the filing of such memorandum, and to file the same with the other papers in the cause, and also to enter upon his docket the time at which the said memorandum was filed.

Form of carrying up the cause

SEC. 26. *Be it further enacted*, That upon taking an appeal as aforesaid, it shall be the duty of the clerk of the County Court, to deposit in the office of the clerk of the Superior court, all the pleadings, papers and documents in the cause, with all documentary evidence and other testimony adduced in the cause, with a transcript of every interlocutory decree or order, and of the final decree pronounced therein; and the clerk of the Superior Court shall thereupon enter the said appeal on the calendar of the said court, for hearing, at the ensuing term thereof.

General provision

SEC. 27. *Be it further enacted*, That the rules of practice in the courts of equity of the United States as prescribed by the Supreme Court thereof, under the act of Congress of the 8th of May, 1792, where provision is not made by this act, shall be the rules for the practice of the courts of this Territory, when exercising equity jurisdiction, and when the rules of practice so directed by the Supreme Court, and the provisions of this act do not apply, the practice of the courts shall be regulated by the practice of the High Court of Chancery in England.

Time to file cross interrogatories may be extended

SEC. 28. *Be it further enacted*, That the judges of the said courts shall in all cases in which a commission for the taking of testimony out of the Territory, shall be applied for, have power on the application of the solicitor of the opposite party, to grant a greater time than ten days in which to file cross interrogatories, on good

and sufficient cause shewn to the said judges on oath by the said solicitor.

GEO. MURRAY,
President of the Legislative Council.

Attested,
F. J. FATIO, Clerk.

(Approved July 3d, 1823.)

WM. P. DUVAL,
Governor of the Territory of Florida.

AN ACT,

Providing for the election of a Delegate to Congress.

Be it enacted by the Governor and Legislative Council of the Territory of Florida, That an election for delegate shall be held on the first Monday of April eighteen hundred and twenty five, and a like election shall be held on the same day in every second year thereafter.

Day of election

SEC. 2. *Be it further enacted,* That the county courts of the respective counties, be and hereby are empowered and directed to appoint such places in their respective counties for holding such election, as they may judge best suited to the convenience of the citizens, and they are hereby authorised and empowered to appoint three judges of the election, any two of whom shall have power to act, at each of the places by them appointed, and to receive and count the votes, which may be given at such places—in case of the death absence, inability to act or resignation of the judge of the county court, it shall be the duty of the clerk of the county court, to appoint the judges and places of holding the election.

County courts to appoint judges

SEC. 3. *Be it further enacted,* That previous to any votes being received, the judges shall appoint a clerk, and the said judges and clerk shall severally take an oath or affirmation, in the following form (to wit) I, A. B. do solemnly swear or affirm (as the case may be) that I will perform the duties of judge of the election (or clerk as the case may be,) according to law, and to the best of my abilities, and that I will studiously endeavor

Judges to appoint a clerk

Oath.

to prevent fraud, deceit and abuse in conducting the same; which oath or affirmation shall be administered by a judge or justice of the peace, present, at the opening of the election, but if no such judge or justice of the peace should be present, the judges of election are hereby authorised and empowered to administer the oath to each other, and to the clerk.

To vote by ballot.

SEC. 4. *Be it further enacted*, That the votes shall be given by ballot, at the time and places of holding the election, and the poll shall be opened, at the hour of eight in the morning and closed at the hour of six in the afternoon of the same day, and the poll shall continue open for three successive days.

Form of conducting election

SEC. 5. *Be it further enacted*, That it shall be the duty of the judges to provide a ballot box, in which shall be deposited by one of the judges, the ballots as soon as they are given to him by the voters; and as the voters hand in their ballots, their names shall be taken down by the clerk in a book prepared by him for that purpose; and on each day when the hour for closing the polls has arrived, it shall be the duty of the judges, to count publicly the votes so given in by ballot, and to insert in a book prepared by them for that purpose, the number given to each candidate.

If two ballots folded together

SEC. 6. *Be it further enacted*, That when two or more ballots are put in the box, folded as one ballot, they shall be destroyed and not counted, and where any ballot contains the name of more than one candidate, it also, shall be destroyed, and not counted.

Form of the return

SEC. 7. *Be it further enacted*, That within four days after the closing of the polls, the judges of the election shall seal up, enclose and deliver to the sheriff of the county in which the election was held, a certificate of the number and names of the candidates voted for, and of the number of votes given to each candidate, in the following manner: "We the subscribers, judges of the election for a delegate to Congress, held at _____ in the county of _____ do hereby certify, that at the said election, held at the aforesaid place, A. B. and C. were candidates, and that there were given for A. B. the number of _____ votes and for C. D. the number of _____ votes.

Signed D. E.

F. G.

Judges of Election.

And it shall be the duty of the sheriff within ten days after receiving the said certificate, to transmit it to the Governor of the Territory.

SEC. 8. *Be it further enacted*, That the said judges shall receive as a compensation for their services and necessary expenses in conducting the election, the sum of two dollars each per day, and the clerks the sum of three dollars each per day.

Compensation to
judges & clerks

SEC. 9. *Be it further enacted*, That it shall be the duty of the Governor or person exercising the government, for the time being, within two months after the time appointed for holding the election, to cast up and arrange the votes from the several counties, or such of them as may have been returned, for each person voted for, as delegate to Congress, and shall immediately thereafter, issue his proclamation, declaring the person having the highest number of votes to be duly elected, as delegate, to represent this Territory in the Congress of the United States, and to grant a certificate thereof, under the seal of the Territory, to the person so elected.

Governor to pro-
claim the person
elected

SEC. 10. *Be it further enacted*, That whenever two or more persons have an equal number of votes for delegate to Congress, and whenever a vacancy shall occur, by the death, resignation or expulsion of the delegate elected, it shall be the duty of the Governor to issue his proclamation to the several judges of election, through the Territory, to cause another election to be held conformably to the provisions of this act, and on such a day as the Governor shall appoint.

Two persons
having equal
number of votes

SEC. 11. *Be it further enacted*, That if any candidate choose to contest the right of any person proclaimed duly elected, to hold his seat in the house of representatives, such person shall give notice thereof in writing to the person whose election he intends to contest, by leaving a written notice thereof, at the house where such person last resided, within fifty days after the date of the Governors proclamation, notifying the result of the election, in which notice, shall be expressed the points in which the same will be contested, and the names of the justices of the peace, who will attend at the taking of the depositions, and when and where they will attend to take the same, *Provided*, That the time fixed upon for taking such depositions, shall not exceed four months from the day of election, and the said justices shall have power, and they are hereby authorised to issue subpoenas to all persons whose testimony may be required, by either of the parties, commanding such person to appear and give testimony at the time and place therein mentioned, under the penalty of fifty dollars, to be levied on each and every delinquent who

Candidate choo-
sing to contest

Form of proceed-
ing

hath been duly served with process, and the said justices shall hear and testify, under seal, all testimony relative to such contested election, to the speaker of the house of representatives of the United States, *Provided nevertheless*, That no testimony shall be received which does not relate to the points in the notice, a copy of which notice, attested by the person who delivered or served the same, shall be delivered to the said justices.

Qualifications of
voters

SEC. 12. *Be it further enacted*, That all white male citizens of the United States, above the age of twenty one years, who have resided in the Territory of Florida for the space of three months previous to the day of election, and all white male inhabitants of the Territory above the age of twenty one years, who were in the Territory at its cession to the United States, on the seventeenth of July, eighteen hundred and twenty one, and who have continued to reside in the Territory until the day of election, shall be entitled to vote for the delegate to Congress.

Challenge to vo-
ters

SEC. 13. *Be it further enacted*, That when objections are made to a person offering to vote, and in all other cases where the qualifications of the person offering to vote is a fact unknown to either of the judges, they shall have power to examine such person, on oath or affirmation, touching his qualifications as a voter, agreeably to the qualifications in the preceding section; which oath or affirmation either of the judges of election is hereby authorised to administer, and such person may be further required to declare on oath or affirmation, that he has not already voted at any other place of election, or has not been refused for want of due qualifications as a voter.

Penalty for fraud
in conducting e-
lection

SEC. 14. *Be it further enacted*, That if any judge of the election or clerk, or any other officer concerned in conducting the election, shall neglect, improperly delay or refuse to perform any of the duties or services required by this act, having undertaken so to do, or shall knowingly admit any person to vote, not qualified according to law, or shall be guilty of corruption, partiality, or manifest misbehavior, in any matter or thing appertaining to said election, or shall knowingly make a false return of the votes given, he or they so offending shall forfeit and pay each to the Territory, a sum not exceeding two hundred dollars, nor less than fifty dollars, to be recovered in any court of record in the Territory, in the name and for the use of the Territory, in an action of debt with costs of suit, at the suit of any

person who may sue for the same, one half to the use of the Territory, and the other half to the use of the person suing.

GEO. MURRAY,

President of the Legislative Council.

Attested,

F. J. FATIO, Clerk,

(Approved July 3d, 1823,)

WM. P. DUVAL,

Governor of the Territory of Florida.

AN ACT,

To regulate conveyances of real property, and the recording thereof, and to prevent frauds and perjuries, and for other purposes.

Be it enacted by the Governor and Legislative Council of the Territory of Florida, That from and after the first day of August next, which will be in the present year of our Lord, one thousand eight hundred and twenty three, no estate or interest of freehold, or for a term of years, of more than two years, or any uncertain interest, of, in or out of, any messuages, lands, tenements or hereditaments, shall be created, made, granted, conveyed, transferred or released in any other manner than by deed in writing, sealed and delivered in the presence of at least two witnesses, by the party or parties creating, making, granting, conveying, transferring or releasing such estate, interest or term of years, or by his, her or their agent thereunto lawfully authorised, unless by last will and testament, or other testamentary appointment duly made, according to law; and that from and after the day and year aforesaid, no estate or interest, either of freehold or term of years, other than terms of years for not more than two years, or any uncertain interest, of, in, to or out of any lands, tenements, messuages or hereditaments, shall be assigned or surrendered, unless it be by deed, sealed and delivered in the presence of at least two witnesses, by the party or parties so assigning or surrendering, or by his, her or their agent thereto lawfully authorized or by the act and operation of law.

No interest in
lands conveyable
but by deed

Trusts to be declared only by writing

Except those arising by construction of law

Assignments of trusts to be by deed

Conveyances of real property to be recorded

Upon certain proof

SEC. 2. *Be it further enacted*, That from and after the said first day of August, all declarations and creations of trust and confidences, of or in any messuages, lands, tenements, or hereditaments, shall be manifested and proved by some writing signed by the party authorised by law to declare or create such trust or confidence, or by his or her last will and testament, or else they shall be utterly void and of none effect. *Provided always*, that where any conveyance shall be made of any lands, messuages or tenements, by which a trust or confidence shall or may arise or result, by the implication or construction of law, or be transferred or extinguished by the act or operation of law, then and in every such case, such trust or confidence shall be of the like force and effect as the same would have been if this statute had not been made, any thing herein contained to the contrary thereof in any wise notwithstanding.

SEC. 3. *Be it further enacted*, That all grants, conveyances or assignments of trust or confidences, of or in any lands, tenements, or hereditaments, or of any estate or interest therein, shall be by deed sealed and delivered in the presence of two witnesses, by the party granting, conveying or assigning the same, or by his or her attorney or agent thereunto lawfully authorised, or by last will and testament duly made and executed, or else the same shall be void and of none effect.

SEC. 4. *Be it further enacted*, That for the purpose of rendering public the alienation of real property, and of preventing frauds, every conveyance, transfer or mortgage of such property, or of any interest therein, shall be recorded in the office assigned by law for that purpose, within the space, if such conveyance, transfer or mortgage, shall have been made in this Territory, of three months from the making thereof—if made in any other part of the United States, of four months from the making thereof—and if made out of the United States, of six months from the making thereof. And in order to procure the recording of any such conveyance, transfer or mortgage, the execution thereof, by the party making the same, shall be acknowledged by such party, or shall be proved upon oath by at least one of the subscribing witnesses thereto, before the officer authorised by law to record the same, or before some judicial officer of this Territory; or if such conveyance, transfer or mortgage shall have been executed out of this Territory, but within the United States, such execution shall be proved in the manner aforesaid, by at least one of the subscrib-

ing witnesses, before the said recording officer, or by the acknowledgment upon oath of the party making such conveyance, transfer or mortgage, that he or she did execute the same for the purposes expressed therein, and of the subscribing witnesses upon oath, that they did see the said party or parties execute the said conveyance, transfer, or mortgage, and that they subscribed their names as witnesses thereto, made and taken before the clerk or prothonotary of any court of record of any of the states, territories or districts of the United States; and the said acknowledgment so taken, shall be certified by such clerk or prothonotary under the seal of the court, if it have one, and if it have none, the fact shall be stated in the certificate, and the certificate of the said clerk or prothonotary shall be authenticated under the hand of the judge or justice or one of the judges or justices of the court to which the said clerk or prothonotary belongs, by certifying that the person who certifies the said acknowledgment was at the time of so doing, the clerk or prothonotary of the court of which he is a judge or justice; or if such conveyance, transfer or mortgage shall have been executed out of the United States, such execution shall be proved before the said recording officer, in manner aforesaid, or by the acknowledgment of the party or parties executing such conveyance, transfer or mortgage, and of the subscribing witnesses thereto made and taken, in the manner and to the effect last aforesaid, before any public minister, consul or vice consul of the United States, residing in the place or country in which the said acknowledgment may be taken; and the said acknowledgment so made and taken shall be certified under the hand and seal of office of the said public minister, consul or vice consul by and before whom it shall have been made and taken; and upon any of the aforesaid proofs being made or exhibited to the said recording officer, of the execution of any conveyance, transfer, or mortgage of real property, it shall be the duty of the said officer to record the same according to law, upon being thereto required.

Form of proof

SEC. 5. *Be it further enacted*, That no mortgage of personal property shall be effectual or valid to any purpose whatever, unless such mortgage shall be recorded in the office of records for the county in which the mortgaged property shall be at the time of the execution of the mortgage, within the aforesaid respective periods, prescribed for the recording conveyances and mortgages of real property, or unless the mortgaged

Mortgages to be valid must be recorded

Mortgages of
personal proper-
ty

property shall be delivered at the time of the execution of the mortgage, or within twenty days thereafter to the mortgagee, and shall continue to remain truly and *bona fide* in his possession; and mortgages of personal property, shall be admitted to record upon proof of the execution thereof being made and exhibited to the recording officer, in any of the ways hereinbefore prescribed for proving the execution of conveyances, transfers and mortgages of real property, or by proof being made upon oath, by at least one credible person, before the recording officer, of the hand writing of the mortgagor or mortgagors, in cases in which there shall be no attesting witnesses to the mortgage.

Slaves to be
deemed personal
property

SEC. 6. *Be it further enacted*, That from and after the passage of this act, slaves shall be deemed, held and taken as personal property, for every purpose whatever.

Form of relin-
quishment of
dower

SEC. 7. *Be it further enacted*, That dower in any lands, tenements or hereditaments, in this Territory, may be extinguished by the wife making herself a party to the conveyance of any lands, tenements or hereditaments, in which she has or may, or shall have a right of dower, for the purpose of relinquishing the same; or she may by a separate relinquishment under her hand and seal, executed in the presence of two witnesses, renounce her right of dower, and in no other way whatever; *Provided nevertheless*, and it is hereby declared, That such relinquishment or renunciation of dower, shall not in either case be valid against, or binding upon the wife, executing the same, or any person or persons, claiming through or under her, unless it be accompanied by an acknowledgment under the hand and seal of the wife, taken and made separately and apart from her husband, before some judicial officer of this Territory, when it shall have been made therein; that the said relinquishment and renunciation of dower is made freely and voluntarily, and without any compulsion, constraint, apprehension or fear, of or from the husband of the party making the said relinquishment; and when any such relinquishment of dower shall be made out of this Territory, the aforesaid acknowledgment shall, if made in the United States, be taken in the manner aforesaid by the clerk or prothonotary of some court of record in the state, territory or district in which it shall be made, in the presence of the judge or justice, or of one of the judges or justices of the court to which the clerk or prothonotary, who takes the acknowledgment, shall belong; and such acknow-

ledgment so taken, shall be certified by the clerk or prothonotary taking it, under the seal of the court, if it have one, and if it have none, it shall be stated in the said certificate; and the taking of the said acknowledgment and the certificate of the clerk or prothonotary shall be authenticated under the hand of the judge or justice, present at the making thereof, by his certifying that the said acknowledgment was made in his presence, and that the person acting as clerk or prothonotary was, at the time of his so doing, the clerk or prothonotary of the court, of which he is a judge or justice; and if any such relinquishment of dower shall be made out of the United States, the acknowledgment of the party making it shall be taken in manner aforesaid by and before some public minister, consul or vice consul of the United States, residing in the country in which the acknowledgment may be taken, and shall be certified under the hand and the seal of office, of such public minister, consul or vice consul.

SEC. 8. *Be it further enacted*, That it shall be the duty of the officers, authorised by law to make and keep the records of conveyances, to record all conveyances, deeds, bills of sale, and all other written transfers of personal property, and all contracts and agreements for the sale of any property whatever, when thereto required, upon proof of the execution thereof being made upon oath, before the recording officer, by a subscribing witness, of such execution, if there be any such witness, or by any credible person, of the hand writing of the party executing the same, when there is no subscribing witness, or in any of the other methods herein before prescribed, for proving the execution of conveyances of real property.

Contracts for personal property may be recorded

Upon proof

SEC. 9. *Be it further enacted*, That no deed conveyance, mortgage or other transfer of any kind whatever, of any lands, messuages, tenements or hereditaments in this territory, or of any interest therein, or of any term of years made or executed in virtue of any power of attorney, shall be good or effectual in law or in equity, unless the execution of the power of attorney under and in virtue of which any such deed, conveyance, mortgage or other transfer may be made, be duly proved before the recording officer of the county in which the lands or tenements are situated, in some one of the ways herein before prescribed for procuring the recording of conveyances of real property, and be recorded at the time of recording the deed, conveyance, mortgage or other transfer made under and in pursuance of it.

Power of attorney to convey to be also recorded

Promise to answer for another to be in writing

SEC. 10. *Be it further enacted*, That no action shall be brought whereby to charge any executor or administrator, upon any special promise, to answer or pay any debt or damages out of his own estate, or whereby to charge the defendant upon any special promise; to answer for the debt, default, or miscarriage of another person, or to charge any person upon any agreement made, upon consideration of marriage, or upon any contract for the sale of any lands, tenements, or hereditaments, or of any uncertain interest in, or concerning them; or for any lease thereof, for a longer term than one year, or upon any agreement that is not to be performed within the space of one year from the making thereof, unless the agreement or promise upon which such action shall be brought, or some note or memorandum thereof, shall be in writing, and signed by the party to be charged therewith, or by some other person by him thereunto lawfully authorised.

Contracts for the sale of goods

SEC. 11. *Be it further enacted*, That no contract for the sale of any personal property, goods, wares or merchandize, shall be good unless the buyer shall accept the goods or part of them, so sold, and actually receive the same, or give something in earnest, to bind the bargain, or in part payment, or some note or memorandum in writing, of the said bargain or contract, be made and signed by the parties to be charged by such contract, or their agents thereunto lawfully authorised.

Possession of grantor to be deemed possession of grantee

SEC. 12. *Be it further enacted*, That by deed of bargain and sale, or by deed of lease and release, or of covenant to stand seized, to the use of any other person, or by deed operating by way of covenant, to stand seized, to the use of another person, of or in any lands or tenements in this Territory, the possession of the bargainor, releasor or covenantor, shall be deemed and adjudged to be transferred to the bargainee, releasee, or person entitled to the use, as perfectly as if such bargainee, releasee or person entitled to the use had been enfeoffed by livery of seizin of the land conveyed by such deed of bargain and sale, release or covenant, to stand seized; *Provided*, That livery of seizin can lawfully be made of the lands or tenements, at the time of the execution of the said deeds or any of them.

Former provisions limited

SEC. 13. *Be it further enacted*, That the act entitled "an act regulating conveyances," approved the thirty first of August, one thousand eight hundred and twen-

ty two, be and continue in force until the first day of August next and no longer.

GEO. MURRAY,
President of the Legislative Council.

Attested,
F. J. FATIO, Clerk,

(Approved 29th June 1823.)

WM. P. DUVAL,
Governor of the Territory of Florida.

AN ACT,

Concerning Wills.

Be it enacted by the Governor and Legislative Council of the Territory of Florida, That every person of the age of twenty one years, being of sound mind, shall have power by last will and testament in writing, to devise and dispose of his, or her lands, tenements and hereditaments, and of his or her estate, right, title and interest in the same, in possession, remainder or reversion at the time of the execution of the said last will and testament, and of the slaves which may be possessed by him or her, at the time of his or her death, *Provided,* That every such last will and testament shall be signed by the testator, or by some other person in his or her presence, and by his or her express directions, and shall be attested and subscribed in the presence of the said testator or testatrix, by three or more witnesses; or else it shall be utterly void and of none effect.

Form of executing a will

SEC. 2. *Be it further enacted,* That no such devise or disposition of lands, tenements, hereditaments or slaves or any part or clause thereof, shall be revocable by any other will or codicil unless the same be in writing and made as aforesaid; but every such last will and testament, devise or disposition may be revoked by any other writing, signed by the testator or testatrix, declaring the same to be revoked, or operating as a revocation thereof by law; or by burning, cancelling, tearing or obliterating the same, by the testator or testatrix, or by his or her direction and consent; or by the act and operation of law.

Revokable only in the same form

SEC. 3. *Be it further enacted,* That no nuncupative will shall be good, that is not proved by the oaths of

Nuncupative
will

three witnesses, at the least, that were present at the making thereof, nor unless it be proved by the said witnesses that the testator, at the time of pronouncing the same, did desire the persons present, or some of them, to bear witness that such was his or her will, or to that effect; nor unless such nuncupative will were made in the time of the last sickness of the deceased, and in the house of his or her habitation or dwelling, or where he or she had been resident, for the space of ten days or more, next before the making of such will, except where such person was surprised by sickness, being from his own home, and died before he or she returned to the place of his or her dwelling.

Testamentary
wills to be writ-
ten down

SEC. 4. *Be it further enacted*, That after six months passed, after the speaking of said testamentary words, no testimony shall be received to prove any nuncupative will, unless the said testimony, or the substance thereof, were reduced to writing, within six days from the making of the said will, and were sworn to before some judicial officer of this Territory within the said six days.

SEC. 5. *Be it further enacted*, That no letters testamentary, or probate of any nuncupative will, shall be granted until sixty days at least from the death of the testator or testatrix, nor shall any nuncupative will be received to be proved, until citation have issued and have been published, or served upon the widow or next of kin of the deceased, at least sixty days from the time appointed for proving such will, calling in the said widow or next of kin, in order that they may contest the same, if they think fit.

Will concerning
chattels

SEC. 6. *Be it further enacted*, That no will in writing concerning any goods or chattels, shall be revoked, nor shall any clause, devise or bequest therein, be altered and changed, by any words, or will by words of mouth only, except the same be in the life of the testator or testatrix, committed to writing, and after the writing thereof, read unto the testator, and allowed by him, and be proved to be done, by three disinterested and credible witnesses at the least.

Form of Probate

SEC. 7. *Be it further enacted*, That last wills and testaments, both of real and personal property may be admitted to probate upon the oath of any person appointed executor or executrix thereto, or when no executor or executrix is appointed, of any other credible person having no interest under the will, that he or she verily believes the writing exhibited as the last will and testament, to be the true last will and testament of the

deceased, which probate may be granted in term time, or vacation, by the several judges of the county courts, or by the several clerks thereof in vacation, in case of the absence or inability of the judges to act, subject to the confirmation or revocation of the court.

SEC. 8. *Be it further enacted*, That the probate of wills, so far as concerns any personal estate, other than slaves, shall be conclusive as to the validity of the will of which it is the probate; and that the probate of wills as far as concerns real property and slaves, shall be prima facie evidence of the validity of the will, of which it is the probate, in any suit or controversy in relation to, or concerning the property, thereby devised or bequeathed, and it shall and may be lawful for any and every person or persons interested, to make application to the court in which the probate of any will may have been granted, for a revocation of such probate, by petition to the said court, which petition shall set forth the grounds upon which revocation is demanded, and a copy thereof, together with a citation to appear and answer the same, shall be served upon the executor or executrix or administrator or administratrix, with the will annexed, at least thirty days before the term of the court to which such citation may be returnable; and the party cited to answer the said petition shall file his or her answer to the same, ten days before the court to which the citation is returnable, and the said court shall upon the petition and answer of the said parties, and the proof adduced by them, which shall in all cases be taken down in writing in open court, confirm or revoke the said probate, according to the law and justice of the case at the term of the court to which the citation shall be returnable, unless good cause be shewn for a continuance.

Probate conclusive as to chattels

But may be revoked

SEC. 9. *Be it further enacted*, That probate of wills duly obtained and granted, by any court in any of the States, Territories or Districts in the United States, or in any foreign country, which relates to property in this Territory, shall be admitted to record in the aforesaid county courts, and shall, when so recorded, have the same force and effect as to the disposition of the property thereby devised or bequeathed, as wills executed in this Territory; *Provided* the said wills made out of this Territory, shall have conformed to the laws thereof, in the form and manner of their execution.

Foreign Probate

SEC. 10. *Be it further enacted*, That nothing in this act contained shall be construed to effect [affect] the rights already vested by the pre-existing Spanish laws

Proviso

in this Territory, in married women, in regard to the power of devising or bequeathing their separate property.

GEO. MURRAY,
President of the Legislative Council.

Attested,
F. J. FATIO, Clerk.

Approved June 29th 1823.

WM. P. DUVAL,

Governor of the Territory of Florida.

AN ACT,

Authorizing a trial *de novo*, in all cases carried up by appeal from the decisions of justices of the peace, to the county courts of this Territory.

Form of the trial

Be it enacted by the Governor and Legislative Council of the Territory of Florida, That in all cases where an appeal is taken from the decision of a justice of the peace, to any of the superior or county courts of this Territory, the appeal being entered in the superior or county courts having jurisdiction, the cause shall be there heard and tried upon the merits *de novo*, on the transcript of the judgment and other papers, as ~~filed therein~~, from the justices court, as though no trial had taken place in the said cause. And the parties to the appeal shall be respectively entitled to the benefits of such legal evidence as they may be enabled to procure, any law to the contrary notwithstanding.

Judgment and
Execution

SEC. 2. *Be it further enacted*, That in all cases of appeal to the superior or county courts of this Territory, the said courts shall cause judgment to be entered up, on the trial of the appeal, and shall cause execution to issue as in other cases.

GEO. MURRAY,
President of the Legislative Council.

Attested,
F. J. FATIO, Clerk.

(Approved June 29th, 1823.)

WM. P. DUVAL.

Governor of the Territory of Florida.

AN ACT,

To amend an act, entitled, "an act to incorporate the City of Pensacola and improve the public roads in the neighborhood thereof."

Be it enacted by the Governor and Legislative Council of the Territory of Florida, That the government of the city of Pensacola shall be vested in a person to be called Mayor, who shall be annually elected by the persons and at the time and in the manner hereinafter provided—and in a Board of Aldermen to consist of twelve members, to be elected in the same manner as is herein after provided.

Government of
the city

SEC. 2. *Be it further enacted,* That all free white male inhabitants, citizens of the United States of twenty five years and upwards, who shall be house keepers, and who shall have resided one year in the city, next preceding the day of election, shall be eligible to the office of Mayor and Alderman; *Provided,* That nothing in this section or act contained, shall be construed to deprive of their rights and privileges, such persons as were inhabitants of this territory at the time of the change of governments.

Qualifications of
officers

SEC. 3. *Be it further enacted,* That all free white male inhabitants of the age of twenty one years and upwards, who shall have resided six whole months in the city next preceding the day of election, and who shall be liable to be taxed by the corporation, and be called upon to perform any duty in the city, shall be qualified to vote at the election for Mayor and Aldermen.—That the first election shall be held at some convenient place in the city aforesaid, on the third Monday in August next; that the second election shall be held on the first Monday in January next, and every succeeding election shall be held on the first Monday of January annually by three commissioners, to be appointed by the board of aldermen, which appointment shall be made at least ten days before the day of each election.

Qualifications of
electors

SEC. 4. *Be it further enacted,* That, the said election of Mayor and Aldermen shall be made by ballot, and shall be held at such place within the city as shall be designated by the commissioners aforesaid.

Former provisions repealed

SEC. 5. *Be it further enacted*, That the second and ninth sections of the act to which this is an amendment shall be, and the same are hereby repealed.

GEO. MURRAY,

President of the Legislative Council.

Attested,

F. J. FATIO, Clerk.

(Approved June the 29th, 1823.)

WM. P. DUVAL,

Governor of the Territory of Florida.

AN ACT,

Authorizing the Governor during the recess of the Legislative Council to make certain appointments.

Governor may
appoint *pro tem*

Be it enacted by the Governor and Legislative Council of the Territory of Florida, That in all the offices civil and of the militia, established by law in this Territory, where any original vacancy may exist, or where any vacancy may be occasioned by death, resignation or otherwise of the officers, the governor shall be, and he is hereby authorized and empowered, during the recess of the Legislative Council, to fill such vacancy by appointment, subject nevertheless to the approval or disapproval of the Legislative Council, or a majority thereof, at the next session.

GEO. MURRAY,

President of the Legislative Council.

Attested,

F. J. FATIO, Clerk,

(Approved June 29th 1823.)

WM. P. DUVAL,

Governor of the Territory of Florida.

AN ACT,

Directing the appointment of a clerk of the Superior Court in the counties of Jackson and Duval.

Be it enacted by the Governor and Legislative Council of the Territory of Florida, That there shall be appointed a clerk for the Superior Court, for the County

of Duval, who shall reside at the County seat of the said County, and keep the records there; and there shall also be appointed a clerk for the Superior Court in the County of Jackson, who shall reside and keep the records at the place where the said Court shall be held.

SEC. 2. *Be it further enacted*, That the clerks thus appointed shall before entering on the duties of their office, take an oath before the judge of their respective Courts, to support the Constitution of the United States and faithfully to perform the duties of their offices; and the aforesaid clerks shall previous to entering upon the duties of their offices, give bonds with security to be approved by the judge of the Superior Courts, in the penal sum of three thousand dollars, for the faithful performance of their duty.

Their oath

And bond

GEO. MURRAY,

President of the Legislative Council.

Attested,
F. J. FATIO, Clerk.

(Approved June 29th, 1823.)

WM. P. DUVAL,

Governor of the Territory of Florida

AN ACT,

For the summoning of Grand and Petit Jurors and for other purposes.

Be it enacted by the Governor and Legislative Council of the Territory of Florida, That Grand and Petit Jurors to serve the Superior and County Courts of this Territory, shall be summoned by the Marshal or Sheriff, or other ministerial officers of the said Courts respectively, by virtue of a writ of *venire facias* to them respectively directed, which summons shall be made, either personally upon the person to be summoned, or left in writing at his dwelling, with some white person residing in his family, or residing in the house in which he dwells, of the age of fifteen years or upwards at least ten days before the first day of the term of the court to which they shall be summoned.

Venire facias to
issue

SEC. 2. *Be it further enacted*, That it shall be the duty of the several clerks of the aforesaid Courts, to have made out, ready for delivery to the ministerial officer

Time of issuing of the respective courts, on his application, the writs of *venire facias*, prescribed by this act, at least five weeks before every term of their respective courts, and it shall be the duty of the ministerial officer of the said courts respectively to apply for and receive the said writs of *venire facias*, at least one month before the term of the court to which they shall be returnable.

Form of *venire* SEC. 3. *Be it further enacted*, That separate and distinct writs of *venire facias* for summoning grand and petit jurors, shall be directed to the Marshal, Sheriff or other ministerial officer of the Court from which they may issue; they shall be tested in the name of the judge of the said court, and be signed by the clerk of the court thereof; it shall be the duty of the ministerial officer who shall execute the said writs or any of them, to make due return of the same to the office of the clerk of the court from which they or any of them issued, at least three days before the first day of the term of the court to which they shall be returnable, and there shall be attached to the said writs respectively a panel of the persons summoned to serve as jurors, which panel shall be signed by the ministerial officer who executed the writ, and the said writs and panels shall be kept in the said office, open to the inspection of suitors and others interested in the proceedings of the said courts, and shall have endorsed thereon by the clerk the time at which they were filed in his office.

And return

Number and qualifications of those to be summoned

SEC. 4. *Be it further enacted*, That the said writs of *venire facias*, shall be executed by the aforesaid ministerial officers of the aforesaid courts by summoning as aforesaid, from the body of the county in which the court issuing the writ shall be held, twenty three such persons as are, or may hereafter be qualified according to law, to serve as grand jurors in the courts of this Territory; and not less than twenty four such persons as are or shall hereafter be qualified, according to law, to serve as petit jurors in the courts of this Territory; *Provided always*, That in the Counties of St. Johns and Escambia, not more than one half of the grand and one half of the petit jurors, shall be summoned from the cities of St. Augustine and Pensacola, respectively, *Provided* nothing in this act contained shall prevent the said superior and county courts, when in session, from commanding the ministerial officers to summon in the manner most convenient, as many other good and lawful men to serve on either of the said juries as may be necessary to supply any deficiency of jurors, arising from the absence of any of those of the original panel,

or whenever from any other cause an additional number of petit jurors shall be necessary.

Sec. 5. *Be it further enacted*, That it shall be the duty of the said ministerial officers in the execution of the said writs of *venire facias*, to summon the most respectable persons of their counties. Idem

Sec. 6. *Be it further enacted*, That jurors to serve in the courts of the justices of the peace of this Territory, shall be summoned by any constable of the county in which the justices court shall be held, in virtue of a precept to any such constable, directed under the hand and seal of the justice awarding the same; they shall be summoned from the neighborhood of the place, and within the county in which the said court shall be held, at least one day before the day on which the court to which they may be summoned is to be held. Jurors to serve in justices courts

Sec. 7. *Be it further enacted*, That every person subject to the performance of the duty of a juror, who shall have been duly summoned to serve as grand juror in any of the courts of this Territory, and shall fail to attend at said court without a good and sufficient cause to be judged of by the court, shall be liable to a fine, to be imposed by the said court in its discretion, not exceeding forty dollars; and every such person who shall have been duly summoned to serve as a petit juror in any of the superior or county courts of this territory, and shall fail to attend at said court without a good and sufficient cause, to be judged of by the court, shall be subject to a fine to be imposed as aforesaid, not exceeding twenty dollars; and such cause shall be shewn and filed on oath, with the clerk, on or before the last day of the next succeeding term of the court, otherwise execution shall be forthwith issued in the name of the territory, against the lands and tenements, goods and chattels of the defaulting juror, for such fine as the court shall direct, and for the costs; and every person duly summoned to serve as a juror in any of the courts of the justices of the peace, who shall fail to attend said court without a good and sufficient excuse, to be judged of by the justice of the peace, shall pay a fine of three dollars; and if such excuse be not made before the said justice of the peace under whose precept he was summoned to attend as a juror, an execution for the amount of the said fine and costs shall be issued against the goods and chattels of such defaulting juror to be levied as in other cases of execution. Penalty for non attendance

Superior court

Justices court

Sec. 8. *Be it further enacted*, That the free white male inhabitants of the Territory of Florida above the

Qualifications

age of twenty one years and under fifty years, shall be qualified and liable to serve as petit jurors for the trial of criminal and civil causes, for the recovery of debts and damages, to any amount whatsoever, but for the trial of all causes affecting title to real estate, the jury shall be composed of freeholders only.

Physicians & Divines exempt

SEC. 9. *Be it further enacted*, That doctors of medicine and clergymen, shall not be liable to serve as jurors within this territory.

GEO. MURRAY,

President of the Legislative Council.

Attested,

F. J. FATIO, Clerk.

Approved June 29th, 1823.

WM. P. DUVAL.

Governor of the Territory of Florida.

AN ACT

To continue in force certain acts of the last session of the Legislative Council of Florida.

Be it enacted by the Governor and Legislative Council of the Territory of Florida, That all the laws passed at the last session of the Legislative Council, which have not expired, or been repealed, by the acts of Congress, or by the acts of the present session of the Council aforesaid, and which are not inconsistent with the provisions of said acts, shall be and the same are hereby continued in full force and effect.

GEO. MURRAY,

President of the Legislative Council.

Attested,

F. J. FATIO, Clerk.

Approved June 29th, 1823.

WM. P. DUVAL,

Governor of the Territory of Florida.

AN ACT

To provide for an additional term of the Superior Court in the District of West Florida,

Be it enacted by the Governor and Legislative Council of the Territory of Florida, That the judge of the Superior Court of the District of West Florida, shall

hold an additional term of the said Court, to commence at the City of Pensacola on the third Monday of September next, and that all causes now depending in said court, or which may have been continued to the next November term of said court, may be set for trial at the term authorised by this act, *Provided* such causes can be fairly tried on their merits.

Third Monday of
September

GEO. MURRAY,
President of the Legislative Council.

Attested,
F. J. FATIO, Clerk.

Approved June 29th, 1823.

WM. P. DUVAL.
Governor of the Territory of Florida,

AN ACT

Providing for the adoption of the Common and Statute laws of England, and for repealing certain laws and ordinances.

Be it enacted by the Governor and Legislative Council of the Territory of Florida, That the common and statute law of England, which is of a general and not a local nature, with the exceptions hereinafter mentioned, down to the fourth day of July one thousand seven hundred and seventy six, be and the same is hereby declared to be of force in this territory; *Provided*, the said common and statute law be not inconsistent with the constitution and laws of the United States, and the acts of the Legislative Council of this Territory—and *Provided also*, That none of the British statutes respecting crimes and misdemeanors, shall be in force in this territory; nor shall any person be punished by the said common law, when the statutes of this territory have made provision on the subject; but where the said statutes have not made provision for the punishment of any offence, the several courts of this Territory shall proceed to punish such offence by fine and imprisonment; *Provided*, That in no case the fine shall exceed five hundred dollars, or the imprisonment twelve months.

Common Law &
Statutes to 4th
July 1776

SEC. 2. *Be it further enacted*, That the doctrine of the right of survivorship, in cases of real and personal property held by joint tenants, shall not be allowed in this territory, and no real estate shall be entailed in this territory.

Survivorship and
Entails

Proviso

SEC. 3. *Be it further enacted*, That nothing in this act contained shall be construed so as to affect the rights of any person or persons vested in him, her or them by any law heretofore existing in this territory.

Laws in force
previous to the
22d July 1823

SEC. 4. *Be it further enacted*, That all the laws and ordinances in force in this Territory, previous to the twenty second day of July, one thousand eight hundred and twenty two, be, and the same are hereby repealed; *Provided nevertheless*, That all causes of action, arising under, and founded on any of said laws and ordinances, shall be judicially determined according to the principles and rules of said laws and ordinances, any thing in this act to the contrary notwithstanding.

Aliens may hold
real estate

SEC. 5. *Be it further enacted*, That aliens of any country or nation whatever, may purchase, hold, enjoy sell, convey or devise any lands and tenements in this territory, to the same extent, and with the same rights as citizens of the United States, and the lawful heirs of such aliens, whether the said heirs be aliens or citizens of the United States, shall inherit and have full right to possess and enjoy any such lands and tenements according to the law of descents in this territory.

GEO. MURRAY,

President of the Legislative Council.

Attested,

F. J. FATIO, Clerk,

Passed by the Council June 29th, 1823.

Rejected by the Governor and passed by the requisite majority of the Council.

AN ACT

Concerning Bonds and Notes.

Proof of execution
not required

Be it enacted by the Governor and Legislative Council of the Territory of Florida, That from and after the passing of this act, when any person is sued on a bond or other writing, it shall not be lawful for the defendant to require of the plaintiff proof of the execution of such bond, or other writing, or of the assignment thereof, unless the defendant shall deny the same on oath.

Consideration of
assignment

SEC. 2. *Be it further enacted*, That it shall not be necessary in an action upon an assignment of any instrument in writing, assignable by law, to set forth in the declara-

ration the consideration upon which such assignment has been made.

SEC. 3. *Be it further enacted*, That the act entitled "an act authorising the assignment of Bonds and Notes" approved the 12th day of August, eighteen hundred and twenty two, be and the same is hereby repealed; *Provided*, That such repeal shall in no case affect any contract entered into, or the transfer of any bond or note made, previous to the passage of this act.

Former provisions repealed

GEO. MURRAY,

President of the Legislative Council.

Attested,
F. J. FATIO, Clerk.

Approved June 29th, 1825.

WM. P. DUVAL,

Governor of the Territory of Florida.

AN ACT

To incorporate the Roman Catholic Congregation of St. Augustine.

Be it enacted by the Governor and Legislative Council of the Territory of Florida, That Bernardo Segui, William Travers, Peter Miranda and Eusebio Gomez, Church Wardens, and their successors in office, shall be and they are hereby declared to be a body corporate by the name and style of "the church wardens of the Roman Catholic Church in St. Augustine, called St. Augustine's church," and they the said Bernardo Segui, William Travers, Peter Miranda and Eusebio Gomez, church wardens as aforesaid, shall be invested with all manner of property, both real and personal, all monies due or to grow due, donation, gifts, grants, hereditaments, privileges and immunities whatever, which may belong to the said church, or which may be made or transferred to them or their successors in office; to have and to hold the same for the proper use and benefit of the said church; and the said church wardens and their successors in office, shall be, and they are hereby declared to be capable of suing and being sued, and of using all necessary legal steps for recovering and defending any property whatever, which the said church may hold, claim, or demand, and is herein secured or otherwise, and also with power to make all necessary regulations and rules; and to recover in their own name

Church incorporated

Limitation of capital

or otherwise, as well the said monies, as other property, with all rents, issues and profits of the same, or of any lands, monies or other estate, belonging thereto or of any part thereof; *Provided nevertheless*, That if the property owned by the said church, shall at any time exceed twenty five thousand dollars, in addition to the property at present owned by the said church, the overplus shall enure to the Territory.

Time of election

Sec. 2. *Be it further enacted*, That the members of the said church shall, on the first Monday of December in every year, elect four discreet persons from among the members of said church, to act as wardens of the said church, who shall be and hereby are declared to be vested with all necessary powers to carry the purposes intended by this act, fully into effect.

GEO. MURRAY,

President of the Legislative Council.

Attested,
F. J. FATIO, Clerk,

(Approved July 2d, 1823,

WM. P. DUVAL,

Governor of the Territory of Florida.

AN ACT,

To incorporate the Protestant Episcopal Congregation of the City of St. Augustine.

Church incorporated

Be it enacted by the Governor and Legislative Council of the Territory of Florida, That George Gibbs and Waters Smith, Church Wardens, and Joseph L. Smith, Thomas H. Penn, Edward R. Gibson, James R. Hanham and Abraham Eustis, vestrymen, and their successors in office shall be, and they are hereby declared to be a body corporate, by the name and style of "the church wardens and vestrymen of the Episcopal Church in St. Augustine, called Trinity church;" and the said George Gibbs and Waters Smith, church wardens, and Joseph L. Smith, Thomas H. Penn, Edward R. Gibson, James R. Hanham, and Abraham Eustis, and their successors in office, shall be invested with all manner of property, both real and personal, all monies due or to

grow due, donations, gifts, grants, hereditaments privileges and immunities whatever, which may belong to the said church, and all monies that have been or may hereafter be given, granted, conveyed or transferred, for rebuilding the said church, or for building a new church in St. Augustine; to have and to hold the same for the proper use, benefit and behoof of the said church; and the said church wardens and vestrymen and their successors in office, shall be, and they are hereby declared to be capable of suing and being sued, and using all necessary legal steps for recovering and defending any property whatever, which the said church may hold, claim or demand, and is herein secured or otherwise, and also with powers to make all necessary regulations and rules, and to recover in their own name or otherwise, as well the said monies as other property with all rents, issues and profits of the same, or of any lands, monies or other estate belonging thereto, or any part thereof.

SEC. 2. *Be it further enacted*, That an election of wardens and vestrymen, for the said church, shall be held annually, commencing on the first Monday in Easter [Easter] week, or as soon thereafter as may be, and the said election shall be held and made by the wardens, vestrymen and congregation of the said church or a majority thereof.

Time of election

SEC. 3. *And be it further enacted*, That if at any time the property owned by the said church, shall exceed the sum of fifty thousand dollars, such excess shall accrue to and become the property, and be invested in this Territory.

Limitation of capital

GEO. MURRAY,

President of the Legislative Council.

Attested,

F. J. FATIO, Clerk.

(Approved July 2d, 1823.)

WM. P. DUVAL,

Governor of the Territory of Florida.

AN ACT,

To provide for the collection of Rents.

Be it enacted by the Governor and Legislative Council of the Territory of Florida, That from and after the

P

Justices may issue distress warrants

passage of this act, it shall and may be lawful for any person, his or her agent attorney or legal representative, who may hereafter have rent due, when the sum does not exceed one hundred dollars, to make application to any justice of the peace of the county, where his, her or their tenant may reside, and on making affidavit before said justice, of the amount of rent due from said tenant, it shall be the duty of said justice, to issue a distress warrant for the amount claimed to be due, directed to any constable of said county, and it shall be the duty of the constable to whom the same may be directed, and he is hereby required to levy on any property belonging to the said tenant; *Provided nevertheless*, That the party distrained, shall be entitled to replevy the property so taken, by making oath that the sum or any part thereof, distrained for, is not due, and give bond and security for the amount, which on trial may be proven to be due, and in that case it shall be the duty of the officer to return the warrant to the justice of the peace, with his proceedings thereon; and it shall be the duty of said justice to cause the said parties to appear before him, at some certain time, and the matter in controversy shall be tried and determined, and execution shall be issued as in other cases.

Tenant may replevy

SEC. 2. *Be it further enacted*, That in all civil cases of distress as aforesaid, where the party distrained on does not within ten days after levying the distress warrant, replevy the property as aforesaid, the officer making the distress shall advertise and sell the property levied on, as in cases of execution

Right of property

SEC. 3. *Be it further enacted*, That when property distrained may be claimed by a third person, the same shall be claimed on oath, and the right of property shall be determined by a jury, as is provided in like cases.

Tenant holding over

SEC. 4. *Be it further enacted*, That where any tenant shall refuse to give possession of the premises at the end of his lease, it shall be lawful for the person, his or her agent, attorney or legal representative, leasing the same, to demand of such tenant double the monthly rent, and may recover the same at the expiration of every month, or in the same proportion for a longer or shorter time by distress, in manner pointed out as aforesaid.

Failing to pay, landlord may re-enter

SEC. 5. *Be it further enacted*, That if any person leasing or renting any land or house shall fail to pay the rent at the time the same becomes due, it shall and may be lawful for the lessor, immediately thereafter, to en-

ter and take possession of the property so by him rented or leased.

SEC. 6. *Be it further enacted*, That all contracts for rent, whether verbal or in writing, shall bear interest from the time the same shall become due, any law usage or custom to the contrary notwithstanding.

Interest recoverable.

SEC. 7. *Be it further enacted*, That it shall and may be lawful for any landlord or landlords, his, her or their heirs, executors, administrators or assigns, to recover a reasonable satisfaction for any house or houses, lands, tenements or hereditaments, held or occupied by any person or persons, by his or their permission, in an action on the case for the use and occupation of the said lands, tenements or hereditaments, when they were not held or occupied by or under an agreement or demise, by deed; and if on the trial of any such action, any parol demise, or any agreement, (not being by deed,) whereby a certain rent was reserved, shall appear or be given in evidence, the plaintiff in such action shall not therefor be nonsuited, but may make use thereof as an evidence of the quantum of damages to be recovered.

Action for use & occupation

GEO. MURRAY,

President of the Legislative Council,

Attested,
F. J. FATIO, Clerk,

(Approved July 3d, 1823.)

WM. P. DUVAL,

Governor of the Territory of Florida.

AN ACT

In addition to "an act for the appointment of keepers of the public Archives"

Be it enacted by the Governor and Legislative Council of the Territory of Florida, That the keepers of the public archives, be and hereby are authorised to receive in deposit in their several offices, under the superintendence and direction of the District Attorneys, all such papers or records as appear to have been heretofore taken from said offices; and it shall be the duty of the said keepers of the archives, to endorse on every paper thus received, the time and manner of receiving the same,

May receive papers heretofore withdrawn from their offices

and the name of the person from whom it was received.

May deliver to other officers certain papers

SEC. 2. *Be it further enacted*, That the keepers of the public archives, be and hereby are authorised to deliver to the respective public offices of this Territory, to which they properly belong, such papers and records as are now in the office of the public archives, and do not belong to the said office.

May be summoned by subpoena duces tecum

SEC 3. *Be it further enacted*, That it shall be the duty of the keepers of the public archives, to attend with any records in their custody when thereunto required by a "*subpœna duces tecum*," issuing out of any of the courts of this territory.

To provide seals

SEC. 4. *Be it further enacted*, That it shall be the duty of the keepers of the public archives to procure a seal for their respective offices and to furnish true and correct copies of any papers, documents or records in their offices, certified under their hands and seals of office, and all copies so certified as aforesaid, shall be as good and as valid in law as the original thereof.

GEO. MURRAY,

President of the Legislative Council,

Attested,

F. J. FATIO, Clerk.

Approved July 3d, 1823.

WM. P. DUVAL,

Governor of the Territory of Florida.

AN ACT

To authorize and regulate the foreclosure of Mortgages by the Courts of Common Law of this Territory, and for other purposes.

Mortgage may be assigned

Be it enacted by the Governor and Legislative Council of the Territory of Florida, That it shall and may be lawful for any and every mortgagee and mortgagees to assign and transfer any mortgage made to him her or them, to any person or persons whatsoever; and that the person or persons to whom any mortgage may be assigned or transferred, may also assign and transfer it, and they and their assigns may lawfully have, take

and pursue the same means and remedies which any mortgagee can or may lawfully have, take, or pursue for the foreclosure of any mortgage, and for the recovery of the money secured thereby.

SEC. 2. *Be it further enacted*, That a mortgage shall be foreclosed under this act in the following manner, that is to say : the person or persons entitled to the foreclosure of any mortgage, may file his, her or their petition either in the Superior or County Court of the District or County in which the mortgaged premises are situated, when they are real property, or in which the mortgaged property may be when it is personal property ; which petition shall describe and set forth the names of the original parties to the mortgage, and if the mortgage has been assigned, the assignments thereof; the debt or demand which the mortgage was given to secure; the amount actually due upon the same, together with a description of the property mortgaged; and shall also contain a prayer that the mortgager or mortgagers, and all persons claiming or to claim, by, through, or under him, her or them, may be forever foreclosed and barred, of and from his, her or their rights or equity of redemption in the said mortgaged property. And the said petition, together with the original mortgage, shall be filed in the office of the clerk of the court to which the application for foreclosure shall be made at least four months, when the foreclosure is to be of real property, and two months when it is to be of slaves or other personal property, before the term of the court at which the judgment of foreclosure shall or can be demanded or rendered. And upon such petition and mortgage, and the exhibition to the said court of any bond, note or other evidence of the debt, to secure which the mortgage was executed which it shall appear was given by the mortgager or mortgagers, on affidavit, being also made by the party or parties, or any of them, petitioning for such foreclosure, or by his, her or their agent or attorney, of the amount of the principal and interest claimed as due, at the time of making such affidavit, the court shall at the first term after the filing of such petition, unless good cause be shewn to the contrary, give judgment for the petitioner or petitioners, for the amount of the principal sum of money and the interest thereon, due to him, her or them, upon said mortgage, together with the costs and charges of the proceedings, and shall also, by its said judgment, forever foreclose and debar the mortgager or mortgagers, and all persons claiming, or to

Form of foreclosure

claim by, through or under him, her or them, of and from all right and equity of redemption, of or in the said mortgaged property, and every part thereof: *Provided always* that such judgment shall in no case be rendered or given, unless it shall be made to appear to the court in a satisfactory manner, by affidavit or otherwise, that a notice containing the substance of the petition for the foreclosure has been duly published, once a week, in some newspaper printed in that district of this Territory, which the mortgaged property is situated or may be, or if no newspaper shall be printed in the said district, then in some newspaper of the Territory, and if none be printed in the Territory, then in a newspaper printed in the state next adjoining the district in which the mortgaged property is situated, or may be, and that such notice has also been posted up at the court house of the Superior Court of the said District, for the space of four months, when the foreclosure is to be of real property, and two months when the foreclosure is to be of personal property, before the term of the court in which judgment shall be rendered, and that such notice has been served personally upon the person or persons having the equity of redemption in the mortgaged property, four months, when the foreclosure is to be of real property, and two months when it is to be of personal property, before the term of the court at which judgment shall be rendered.

SEC. 3. *Be it further enacted*, That whenever any mortgager or any person or persons having a right or interest in the equity of redemption of any mortgaged property, shall have any objection or cause to shew against the foreclosure of such equity of redemption, such objections or cause shall be shewn and filed by way of plea to the petition of foreclosure, on or before the first day of the term next following the expiration of the aforesaid respective periods prescribed for the publication or service of the notice of the substance of the petition for foreclosure; and such plea, or the matters of fact therein contained, shall be verified by the oath of the party filing the same, or of some other credible person—and the petitioner or petitioners for foreclosure may take issue on the plea, reply or demur thereto; and the right and justice of the case shall be decided by the court and jury or the court alone, as the case may be, at the same time, if the petitioner or petitioners shall require such decision, unless good and sufficient cause be shewn by the opposite party for a continuance.

Mortgager may
come in and de-
fend

SEC. 4. *Be it further enacted*, That upon application of any person entitled to the foreclosure of a mortgage of slaves or other personal property, remaining in the possession of the mortgager or mortgagers, for an attachment against the property mortgaged, it shall be the duty of the judge of the court, to which application for the foreclosure of the mortgage shall be made, to direct the issuing of a writ of attachment; which the clerk of the said court shall accordingly issue, directed to the ministerial or executive officer of the said court, commanding him to attach, levy upon and take into his possession and custody the said mortgaged property, or so much thereof as will be sufficient to satisfy the debt or demand of the petitioner or petitioners and the costs and charges of the proceedings; and the said officer shall execute such writ without delay, and shall retain the said property attached in his custody and possession, until the judgment of foreclosure shall be obtained, when he shall dispose of it according to law; or until the further order of the court in the premises, unless it shall be replevied in the manner hereinafter pointed out—but no such writ of attachment shall issue unless the petitioner or petitioners for foreclosure or any of them, or his, her or their agent or attorney, shall make oath of the sum really and truly due upon the mortgage to be foreclosed, and shall exhibit to the judge the original mortgage and any other evidence, or an acknowledgment of the debt or demand secured by it, which shall appear to have been given by the mortgager or mortgagers at the time the application for such writ of attachment shall be made—the demand of the said attachment if made at the time of filing the petition for foreclosure, must be contained in the said petition, but the said attachment may be applied for by petition and obtained, on a compliance with the foregoing requisitions, at any time before the judgment of foreclosure.

Mortgaged property may be taken by attachment

Upon oath

SEC. 5. *Be it further enacted*, That it shall and may be lawful for the mortgager or mortgagers or any other person or persons having an interest in the equity of redemption of any slaves or other personal property, which may be attached under the last preceding section of this act, to replevy the same by giving bond with at least two good and sufficient sureties, who shall be freeholders, in a sum double the amount of the debt sworn to be due upon the mortgage, payable to the ministerial officer of the court to whom the writ of attachment shall have been directed, and conditioned to

Mortgaged property may be replevied by bond

return to the said officer, or his successors in office, the said property, whenever the mortgage of it shall be foreclosed by the judgment of the court, or to pay such sum of money as shall by the said judgment be adjudged to be due to the petitioner or petitioners for foreclosure, and all the costs and charges of the proceedings, whenever the same shall be demanded—but no such replevy shall be made but upon the payment of all costs of issuing the attachment, and of the proceedings consequent thereon—and the bond so given on replevy by the provisions of this section shall have the force and effect of a judgment—and nothing contained in this section shall be so construed as to release the mortgaged property from the lien created by said mortgage.

Effect of the
bond

Judgment and
execution as in
other cases

Equity jurisdic-
tion reserved

SEC. 6. *Be it further enacted*, That the judgment of the court in the foreclosure of a mortgage shall in all cases be entered up and filed, and that execution shall issue thereon as in other cases.

SEC. 7. *Be it further enacted*, That nothing in this act contained shall affect the jurisdiction of the courts of equity of this Territory in matters of mortgage; and that all acts or parts of acts repugnant thereto, be and the same are hereby repealed.

GEO. MURRAY,

President of the Legislative Council.

Attested,

F. J. FATIO, Clerk.

(Approved July 2d, 1823.)

WM. P. DUVAL,

Governor of the Territory of Florida.

AN ACT,

To provide for the organization of a county south of Charlotte harbour in the Territory of Florida.

Be it enacted by the Governor and Legislative Council of the Territory of Florida, That all that part of the Territory aforesaid, lying south of a line commencing at Boca Gasperilla, the mouth of Charlotte harbour on the Gulph of Mexico, and extending up the northern margin of said Charlotte harbour to the mouth of Charlotte river, thence up the northern margin of said river to lake Macaco, thence along the northern margin

Boundaries of
Monroe county

of said lake to its most eastern limits, thence in a direct line to the head waters of Potomac river, thence down said river to its entrance into the ocean, together with all the keys and islands of the cape of Florida, shall constitute a county to be called Monroe County.

SEC. 2. *Be it further enacted*, That the Governor shall be and he is hereby authorized and empowered, for the protection and the administration of justice in the county established by this act, to appoint such officers, civil and of the military, as are or may be by law provided in the several counties of this Territory.

Governor to appoint officers

SEC. 3. *Be it further enacted*, That the officers thus appointed, shall exercise the same powers, incur the same penalties and responsibilities, and be entitled to receive the same compensation as is or may be by law provided for officers of the same station, in the several counties of this Territory.

SEC. 4. *Be it further enacted*, That the judge of the county court to be appointed by virtue of this act, shall hold two terms of his said court in each and every year, to commence at Allenton on the Island of Key West, on the first Mondays in May and October.

Terms of County Court

SEC. 5. *Be it further enacted*, That it shall be the duty of the said judge, at the first term of his court, any three of the magistrates of said county being present, and concurring therein, to appoint four commissioners inhabitants of said county, to select the most eligible and convenient situation for the county seat of said county, *Provided*, That no two of the said commissioners shall be appointed from any one of the islands of said county, and that two at least shall be appointed from the main land.

Commissioners to choose county seat

SEC. 6. *Be it further enacted*, That when the said county seat shall have been established, according to the provisions of this act, it shall be the duty of the judge to hold his court at the place established, and the clerk shall reside and keep his office there.

SEC. 7. *Be it further enacted*, That if the said commissioners or a majority of them, should not agree with regard to the most eligible situation, for the county seat, then and in that case the subject of disagree-

Judge to decide in case of disagreement

ment shall be referred to the judge of the county court: whose decision shall be final.

GEO. MURRAY,

President of the Legislative Council.

Attested,
F. J. FATIO, Clerk,

(Approved July 3d, 1823.)

WM. P. DUVAL,

Governor of the Territory of Florida.

ANACT,

To incorporate the Roman Catholic Congregation of the City of Pensacola.

Church incorpo-
rated

Be it enacted by the Governor and Legislative Council of the Territory of Florida, That all the free white male inhabitants, belonging to the Roman Catholic Congregation of the City of Pensacola, shall be and they are hereby constituted a body politic and corporate by the name and style of the Catholic Congregation of the City of Pensacola, and by their corporate name may sue and be sued, implead and be impleaded, grant, receive and do all other acts as natural persons, and may purchase and hold real, personal, and mixed property, and dispose of the same for the benefit of the said congregation, and may have and use a seal which may be broken or altered at pleasure.

Limitation of ca-
pital

SEC. 2. *Be it further enacted,* That if the property or possessions of the said corporation should at any time hereafter exceed the value of twenty five thousand dollars, exclusive of the possessions or property now belonging to the said corporation, then and in that case the excess shall accrue to the Territory.

Government

SEC. 3. *Be it further enacted,* That the government of said corporation shall be vested in five persons to be called the Church Wardens of the Catholic Congregation, that the said wardens shall be annually elected as hereinafter prescribed, and shall have power to enact such by-laws and regulations as may be necessary to promote the prosperity of said corporation, *Provided* such laws are not inconsistent with the constitution and laws of the United States, and the laws of this territory.

SEC. 4. *Be it further enacted*, That the members of the said congregation shall on the first Monday of October of each year, proceed to elect five discreet persons, members of the said congregation, to serve for one year as church wardens of the said congregation, that the five persons thus elected shall choose from their number a senior warden, who shall preside over the board of church wardens, and the election of said wardens shall be held by three commissioners to be chosen by the Mayor (for the first election, and for all future elections by the wardens of said corporation) of the city of Pensacola at least five days previous to the day of election.

Election

SEC. 5. *Be it further enacted*, That the said board of Church wardens shall have power to fill vacancies in their own body, by causing elections to be held in the manner hereinbefore directed.

Quorum

SEC. 6. *Be it further enacted*, That any three members of the said board shall form a quorum to do business.

SEC. 7. *Be it further enacted*, That in case no election shall be held from unavoidable causes, at the time appointed by this act, the charter of the corporation shall not on that account be forfeited, but it shall be the duty of the Mayor of the city to name another day for holding the election, as near as convenient to the one appointed by this act, and which said election shall be as valid and legal as if the same had been held at the proper time.

Charter not to be
void for want of
election on the
day appointed

GEO. MURRAY,
President of the Legislative Council.

Attested,
F. J. FATIO, Clerk.

Approved July 3d 1823.
WM. P. DUVAL,
Governor of the Territory of Florida.

AN ACT,

To provide for the conciliation of private controversies.

Be it enacted by the Governor and Legislative Council of the Territory of Florida, That in all causes of action within the jurisdiction of the justices of the peace of this Territory, when the process has been returned executed to the magistrate, by whom the same

Arbitrators may
be chosen

has been issued, it shall be the duty of the parties, his her or their agent or attorney, to appear before said justice, each accompanied by an arbitrator chosen by himself, and the said arbitrators thus appointed, shall under the direction of the justice of the peace, proceed to examine the said cause of action, and endeavor to conciliate the parties litigant; and in case the said parties shall agree to the settlement of the controversy and the conciliation be effected, the said conciliation shall be entered by the justice, before whom the cause may be pending, and shall have the force and effect of a judgment.

If not, judgment
as usual

SEC. 2. *Be it further enacted*, That in all causes as aforesaid, where the parties plaintiff or defendant shall not appear at the time appointed for the arbitration, or when appearing shall not conciliate the matter in controversy, it shall be the duty of the justice of the peace in whose court the case may be depending to proceed forthwith to the trial and determination of the cause of action, according to the manner directed by the laws of this territory—*Provided*, That the said cause can be tried on its merits.

GEO. MURRAY,
President of the Legislative Council.

Attested,
F. J. FATIO, Clerk,

(Approved 2d July, 1823.)
WM. P. DUVAL,
Governor of the Territory of Florida.

AN ACT,

To amend an act entitled "an act organizing the Militia of the Territory."

Organization of
brigades

Be it enacted by the Governor and Legislative Council of the Territory of Florida, That the Territory aforesaid shall be divided into two brigades to be commanded by a Brigadier General, the first brigade to be composed of the counties of Escambia, Jackson and Gadsden, and the second brigade to be composed of the counties of Duval, St. Johns and Monroe; each brigade shall consist of not less than two, nor more than four regiments, each regiment of two battalions, each battalion of not less than four companies, and each company of one captain, one first lieutenant, one second lieutenant, four sergeants, four corporals,

two musicians, and not less than thirty, nor more than eighty privates: *Provided*, That where any number of militia in a county is not sufficient to form a regiment, they shall compose a separate battalion, or be formed into independent companies, as may be found most convenient and proper. The regiments and battalions shall be numbered by the commander in chief, from one upwards, and shall rank according to their numerical designation; the officers of equal grade shall rank according to the date of their commissions, and when two such commissions shall be of the same date, the rank shall be determined by former services in the militia of any state or territory of the union, or by former services in the army or navy of the United States, and when no former services shall have been rendered, the rank shall be determined by the field officers of the regiment: *Provided*, That at any regimental or battalion muster the several companies shall form a regiment or battalion, according to seniority; and the same rules shall apply when different corps are assembled together, excepting so far as by certain usage or necessity, the cavalry, artillery or light corps may be detached from the battalion.

SEC. 2. *Be it further enacted*, That the staff of each brigade shall consist of one Inspector General, one Quarter Master General and two Aids-de-Camp, to be appointed by the Generals of brigades respectively.

Brigade staff

SEC. 3. *And be it further enacted*, That the second section of the act to which this is an amendment shall be and the same is hereby repealed.

Former provisions repealed

SEC. 4. *And be it further enacted*, That the militia shall muster not oftener than twice a year in companies, and not oftener than once a year in battalion, nor oftener than once a year in regimental meeting, and practising physicians shall be excused from performing military duty.

Times of musters

GEO. MURRAY,
President of the Legislative Council.

Attested,
F. J. FATIO, Clerk.

(Approved July 3d, 1823.)

WM. P. DUVAL.
Governor of the Territory of Florida..

AN ACT,

Concerning the whipping of Criminals.

Sheriff may employ another to perform that duty

Be it enacted by the Governor and Legislative Council of the Territory of Florida, That whenever any criminal shall be sentenced to be whipped, by any judge of any court, or any jury, it shall be lawful for the marshal or sheriff to employ another person to execute the sentence of the court, any law to the contrary notwithstanding : *Provided,* That the said marshal or sheriff shall always be present, during the execution of the order of the court, directing the infliction of punishment, and shall see that the same be faithfully executed.

GEO. MURRAY,

President of the Legislative Council.

Attested,

F. J. FATIO, Clerk.

Approved July 5th, 1823.

WM. P. DUVAL,

Governor of the Territory of Florida.

AN ACT

Concerning wreckers and wrecked property.

Preamble

WHEREAS it is necessary that prompt and efficient protection should be given to wreckers and to the owners of wrecked property brought within the limits and jurisdiction of this Territory :

Salvors to report to a justice or notary

Be it enacted by the Governor and Legislative Council of the Territory of Florida, And it is hereby enacted by the authority of the same, That whenever wrecked property of any description whatsoever shall arrive, be brought in or landed in any part of this Territory, it shall be the duty of the salvor or salvors, owner or owners, or their representatives, or other persons having charge of the same, to make report of the fact of such arrival to such justice of the peace or notary public as may reside next adjacent to the place of arrival.

SEC. 2. *Be it further enacted,* That it shall be the duty of such justice or notary to summon a jury of five persons, to enquire into the facts of such wreck and

salvage, and to give previous notice thereof to such salvors and owners, or their representatives, as may, to the best of the knowledge of such justice or notary, be present at the place of such arrival.

Jury to be summoned

SEC. 3. *Be it further enacted*, That two of the persons who are to compose the said jury, shall be nominated by the owners of the property or their representatives, and two of the other persons shall be nominated by the salvors or their representatives, and the fifth person to compose the said jury shall be nominated by the justice or notary, and if there shall be no owner or representative of an owner, at the place of arrival, then it shall be the duty of the justice or notary, to nominate two persons to compose the said jury, on behalf of the owners of the property so brought in.

Jury how chosen

SEC. 4. *Be it further enacted*, That it shall be the duty of the said jury to make enquiry into the circumstances attending such wreck and salvage, and to examine evidence as well on behalf of the owners, as on behalf of the salvors, and to make up in writing an award, setting forth a specification of the property, their opinion of the mode whereby the property ought to be disposed of, for the benefit of those interested, and the quantum of salvage to be allowed to the salvors, whether a portion of the property or of the proceeds thereof.

Their verdict

SEC. 5. *Be it further enacted*, That before the jury proceed to an examination, it shall be the duty of the justice or notary to administer to each of the members thereof, the following oath, "I ————— do solemnly swear, that I will diligently examine into the circumstances attending the wreck and salvage of the property submitted to the consideration of this jury, and without partiality to the owners, or to the salvors or others interested, I will to the best of my judgment make up my award according to law" and it shall be the duty of the justice or notary to summon before the jury such witnesses as they may require, and to keep a record of the evidence by them taken.

Their oath

Witnesses may be summoned

SEC. 6. *Be it further enacted*, That it shall be the duty of the justice or notary, when the jury shall have made up their award and signed the same, to transmit the certified copy thereof to the clerk of the Superior Court of the district, wherein such property may have arrived, and it shall be the duty of the justice or notary to cause effect to be given to the award of the jury, and to abide by and fulfil such future instructions there-

Award of jury to be sent to clk. of sup. court

upon, as he may receive from the clerk of the Superior Court.

Owners or agents present

SEC. 7. *Be it further enacted*, That nothing in this act contained shall be construed to hinder or molest the owners of any vessel or cargo or their representatives from pursuing their interest in the same, but where it shall appear manifest that a captain, supercargo or other agent, is duly appointed, and by maritime usage qualified to claim and to receive a portion of the property so brought in, such agent shall, on complying with the condition of this act, be entitled to receive such proportion of the property, or the proceeds thereof, as may be consistent with the award of the jury; and in cases where the whole ownership in property is duly and lawfully represented as aforesaid by an agent, such agent shall, without hindrance or molestation, from the provisions of this act, be at liberty to compromise, adjust and settle the salvage with the salvors, they the salvors giving their consent to the same.

Clk. of Sup. Ct. to advertise

SEC. 8. *Be it further enacted*, That to the intent that the lawful owners of property thus wrecked and saved, may receive information thereof, it shall be the duty of the clerk of the Superior Court to advertise the same once a month for twelve months in at least one of the Gazettes of this Territory, and in behalf of the owners, to take a superintending charge of the property or proceeds thereof, and to dispose of or deposit the same in such manner as to the said clerk may seem most beneficial for the interest of the owners.

Owners not appearing

SEC. 9. *Be it further enacted*, That if before the expiration of a year and a day from the date of the award of the jury, a claim shall be preferred by the owner or owners of the property so advertised, such claim on being established shall be held to be valid, but if after the expiration of the said term of a year and a day, no claim shall have been preferred for the property so advertised, the same, or the proceeds thereof, shall be deemed and considered the property of the salvors, after deducting therefrom ten per cent for the use of the Territory.

Certain portions to be retained by the clerk

SEC. 10. *Be it further enacted*, That in all cases where-in wrecked property shall have been advertised and a claim thereto preferred and admitted, before the same shall be delivered or paid over to the claimant, the clerk shall retain therefrom five per centum for the use of the Territory, and a compensation for himself of two per centum, if the amount does not exceed the

sum of one thousand dollars, and for all sums over one thousand dollars, one per centum, besides all other charges and expenses necessarily incurred in protecting the property; and in all cases wherein a jury may have been summoned, and have given their award by virtue of this act, each person composing such jury shall receive at the expense of the property, a compensation of one dollar and fifty cents per day for every day they may have been in attendance, by virtue of this act; and the justice or notary shall at the expense of the property, receive a compensation of two per centum if the value does not exceed two hundred dollars, and one per centum if the value should exceed five hundred dollars.

For fees

SEC. 11. *Be it further enacted* That in all cases of wreck and salvage the property saved and brought into this territory, shall contribute three per centum of the value thereof for the use of the territory, to be collected by such justice of peace, or notary public as may reside next adjacent to the place of the arrival thereof, and by him transmitted to the clerk of the Superior Court of the district, wherein such property may have arrived, and it shall be the duty of the said clerk to pay over all sums by him received by virtue of this act, to the treasurer of the territory.

And for the territory

SEC. 12. *Be it further enacted*, That all persons failing or refusing to perform the duties required by this act, shall for such defalcation be liable to a forfeit for the use of the party aggrieved thereby; the justice of peace or notary, shall forfeit a sum not exceeding one hundred dollars; each of the persons summoned as jurors, shall forfeit a sum not exceeding twenty dollars; each witness summoned before the jury shall forfeit a sum not exceeding twenty dollars; and the clerk of the Superior Court shall forfeit a sum not exceeding five hundred dollars, at the discretion of the court before whom the party aggrieved may sue for the same.

Penalty for non compliance

SEC. 13. *Be it further enacted*, That any person bringing wrecked property within the limits of this territory, or receiving and having charge thereof, and who shall neglect or refuse to make report thereof in manner required by this act, with intent to conceal from, or to deprive the proper owners of the same, or any part thereof, such person or persons so offending, shall forfeit all his or their right, interest and claim to such property, to and for the use of the government of the territory.

Fraud of Salvors

Holding out false
lights declared
felony

SEC. 14. *Be it further enacted*, That if any person shall within this territory, make or hold out any false lights, or make any device, or do any other act or thing with intent to mislead, bewilder or decoy the mariners of any vessel on the high seas, whereby such vessel may be cast ashore, or get aground, such person or persons so offending, and every accessory thereto, shall on conviction thereof be deemed guilty of *Felony*, and shall suffer death.

Provide

SEC. 15. *Be it further enacted*, That nothing in this act contained shall be construed to affect the revenue of the United States, but it shall be the duty of all persons having charge of wrecked property, to report the same to the officer of the United States duly authorised and residing next adjacent to the place of arrival, in conformity to the revenue laws of the United States in such case made and provided.

GEO. MURRAY,

President of the Legislative Council.

Attested,

F. J. FATIO, Clerk.

Approved July 4th, 1823:

WM. P. DUVAL.

Governor of the Territory of Florida.

AN ACT

To establish the fees of certain officers and for other purposes.

Be it enacted by the Governor and Legislative Council of the Territory of Florida, That it shall and may be lawful for the several officers hereinafter mentioned to demand and receive for their services the respective fees hereinafter mentioned, (that is to say,)

Surveyor

The surveyor of each county shall receive such fees and compensation, as shall be fixed by the county courts of their respective counties.

The clerks of the Superior and County Courts shall receive the following fees:

For entering the appearance of the defendant in person or by attorney, twelve and a half cents.

Clerks fees

For docketing any cause noticed for trial, twelve and a half cents.

For every original writ, capias or subpœna in chancery or other legal proceedings under the seal of the court, fifty cents.

For every rule entered in the common rule book, eighteen and three quarter cents.

For entering every order of court thirty seven and a half cents.

For filing every paper twelve and a half cents.

For entering the return of every writ or other process twelve and a half cents.

For swearing a jury one dollar.

For administering every other oath twenty-five cents.

For recording any order, proceeding, deed, bill of sale or other matter required to be recorded in a book kept by the said clerk for that purpose, where the same shall not exceed two hundred words, fifty cents, and twenty five cents per hundred words where the same shall exceed two hundred words.

For a copy of any paper, where the same shall not exceed one hundred words, twenty-five cents, and where the same shall exceed one hundred words, fifteen cents for every hundred words.

For every search twenty five cents for one years standing, or twelve and a half cents for less time.

For every written notice and service thereof, twenty-five cents.

For docketing every judgment, twenty five cents.

For every certificate twenty five cents.

For drawing every advertisement, instructions attached to commissions for taking depositions, and all other papers or writings not herein otherwise provided for, where the same shall not exceed one hundred words, twenty five cents, and where the same shall exceed one hundred words, fifteen cents for every hundred words.

For affixing the seal of the court to any paper other than before allowed, twenty five cents.

For every marriage licence, and registering such marriage fifty cents.

For all services performed for this Territory, such compensation as shall be allowed by the county court, and to be paid out of the county treasury.

For every service for which no compensation is herein provided, such fee or compensation as shall be allowed and fixed by the judges of their respective courts.

The judges of the county courts shall receive for their services the following fees.

In every suit or other proceeding prosecuted in the said county court, the sum of four dollars to be paid to the clerk of the said court at the time of the commencement of such suit or proceeding.

Judge of county
court

For the necessary orders for the probate of any will, or for letters testamentary or of administration thereon, or for letters of administration of the estate of any intestate; two dollars and fifty cents.

For every order at Chambers, seventy-five cents.

Justices of the Peace shall receive for their services the following fees.

For superintending proceedings under the act concerning forcible entry and detainer, two dollars per day.

Justices of the
peace

For every warrant, fifty cents.

For every judgment fifty cents.

For every attachment fifty cents.

For every venire fifty cents.

For every summons for witness or garnishee, twelve and a half cents.

For swearing every jury thirty seven and a half cents.

For administering every other oath twenty five cents; but no fee shall be allowed to any justice of the peace, for swearing any witness in a suit tried before him.

For every judgment by default or confession, twenty five cents.

For every execution fifty cents.

For posting a stray and recording each post note, five cents.

For making every bond fifty cents.

For attending at the house of any deponent to take

For attending, one dollar.

depositions, giving the rites of matrimony fifty cents.

For celebrating the same shall receive for their services the

Notaries public

Notaries public

For protesting a bill of exchange or promissory note, two dollars.

and registering the same or note for non-acceptance

Noting a bill of exchange

or non-payment, fifty cents.

For administering every oath or deposit, and not-

Attending at a demand, tender

ing the same, one dollar.

For attesting letter of attorney and seal, fifty cents.

Noting protest of captain of a vessel, one dollar, and for extending the same, fifteen cents for every hundred words.

For every certificate fifty cents.

For registering every foreign protested bill or protest, fifty cents.

Comparing all papers already written, ten cents for every hundred words.

Keepers of the Archives shall receive for their services the following fees.

For the copy of every paper or document not exceeding one hundred words, twenty five cents, and if exceeding one hundred words, twenty cents per hundred words.

Keepers of the Archives

For comparing all papers already written, six and a quarter cents for every hundred words.

For every search for the first year, thirty seven and a half cents, and for every year more than one, twelve and a half cents.

For each official certificate of office, under seal, one dollar.

The Marshals or Sheriffs, shall receive the following fees for their services.

For levying an attachment on the estate of an absent debtor, two dollars, and if on real estate one dollar.

Marshal and Sheriff

For summoning garnishee fifty cents.

For serving capias ad respondendum fifty cents.

For serving summons ad respondendum, fifty cents.

For the return of every process twelve and a half cents.

For taking bail fifty cents.

For executing a habere facias possessionem, two dollars.

For removing a prisoner ten cents for each mile.

For committing prisoner to jail one dollar.

For releasing prisoner twenty five cents.

For serving a fieri facias, one dollar.

For levying a fieri facias and making the money thereon, for the first hundred dollars five per cent, and for the remainder two and a half per cent ; but whenever the sale under any execution shall be stayed, by injunction or otherwise, then only half of the above commissions shall be allowed.

For serving a capias ad satisfaciendum, two dollars for each defendant.

For making money on ca. sa. the same commission as is allowed on a fi. fa. where no sale takes place.

For whipping a free person by order of court two dollars.

For keeping every slave taken in execution, or on attachment, twenty-five cents per day, such slave being allowed half a pound of salt meat or beef per day, and one peck of good indian corn per week, or such other rations as may be equivalent thereto.

For calling a jury in each suit fifty cents.

For every summons or notice not herein provided for, twenty five cents.

For summoning jury upon an inquisition in the country, four dollars.

For serving subpoena in chancery, fifty cents.

For serving attachment for a contempt, one dollar.

For taking bonds of every kind, fifty cents.

For every miles travel in the service of any process four cents per mile going, and four cents per mile returning.

For all services on behalf of this territory, such compensation as shall be allowed by the county court, to be paid out of the county treasury.

Constables shall receive for their services the following fees.

Constables fee

Serving a warrant in civil cases, fifty cents.

Levying an execution fifty cents.

Levying an attachment fifty cents.

Serving a peace or search warrant, one dollar.

Carrying a prisoner to jail, ten cents per mile.

For collecting money by sale of property under executions, the same commissions as are allowed by law to sheriffs.

For summoning a jury, seventy-five cents.

Serving every notice or summons, twenty-five cents.

For every miles travel in the service of process, the same fee as the sheriff.

Coroners shall receive for their services the following fees.

Coroner

For summoning a jury and taking an inquisition on a dead body, to be paid out of the estate of the deceased if the same be sufficient, if not, by the county, eight dollars.

Jailers shall receive for their services the following fees.

Jailers fees

For putting in prison and releasing, each, twenty-five cents.

Keeping and providing for a debtor in jail, fifty cents per day.

Keeping and providing for other prisoners thirty seven and a half cents per day.

For all services on behalf of this territory such compensation as shall be allowed by the county court to be paid out of the county treasury.

Services not provided for

SEC. 2. *Be it further enacted*, That when any officer shall perform any service under, and by virtue of any law of this territory, and no compensation shall be provided by this law for such officer, he shall receive

the same compensation as is allowed by law to any other officer, for the same or for similar service, and where no compensation is provided by law for such service, he shall be entitled to receive therefor, a reasonable compensation to be taxed by the judge of the county court, of the county in which such officer shall reside, or such service shall be performed.

SEC. 3. *Be it further enacted*, That the costs of a suit in the court of any justice of the peace in this territory, shall not exceed the sum of four dollars, exclusive of mileage, and if any justice of the peace or constable within this territory, shall ask, demand or receive any greater sum than four dollars, exclusive of mileage for or on account of the costs of any suit, before any justice of the peace of this territory, the excess over and above four dollars, so demanded, shall and may be recovered of said justice or constable before any justice of the peace of this territory, with triple damages and triple costs.

Limitation of
costs in justices
court

SEC. 4. *Be it further enacted*, That if any officer of this territory shall ask, demand or receive for or on account of any services performed under and by virtue of any law of this territory, any greater sum than by this law is allowed for such service, the amount so demanded or received over and above the [amount by] law allowed for the same, shall and may be recovered by motion, before any court of record within this territory, or by action of debt, before any justice of the peace of this territory, with triple damages and triple costs,

Penalty for ex-
tortion

SEC. 5. *Be it further enacted*, That the judges of the Superior and County Courts of this territory are hereby authorized and required to provide for their said courts respectively, seals with suitable devices and inscriptions, which said seals when so provided, shall be deposited in the office of the clerks of said courts respectively, and until seals shall be so provided for said courts, the process issuing out of the said courts without a seal shall have the same force and effect as if a seal were affixed thereto.

Judges to pro-
vide seals

SEC. 6. *Be it further enacted*, That all constables in this territory before they enter upon the duties of their offices, shall enter into bond to the governor of this territory, with sufficient security, to be filed in the office of the clerk of the county in which said constable shall reside, in the penal sum of five hundred dollars, conditioned for the faithful discharge of the duties of their said office, which bond shall not be void upon the pay-

Constables to
give bond

ment of the penalty, but remain in full force, and the constable and his securities shall be liable to the suit of any person for neglect or malfeasance in office.

Constables may
act until others
be appointed

SEC. 7. *Be it further enacted*, That until the county courts shall appoint other constables, the persons at present exercising said office, shall continue to exercise the same: *Provided*, That bonds be filed by them pursuant to the provisions of this act.

District Attor-
neys fees

SEC. 8. *And be it further enacted*, That the district attorney shall receive for his services the following fee.

For every indictment or other proceeding on behalf of this territory, prosecuted to conviction, the sum of ten dollars, to be paid by the defendant, or if the defendant be unable to pay the same, out of the county treasury.

GEO. MURRAY,

President of the Legislative Council.

Attested,

F. J. FATIO, Clerk.

Approved July 4th, 1823.

WM. P. DUVAL,

Governor of the Territory of Florida,

AN ACT

To extend the authority of the judges and clerks of the county courts in certain cases.

County courts to
have jurisdiction
where circuit
courts are men-
tioned

Be it enacted by the Governor and Legislative Council of the Territory of Florida, That all the authority, where not otherwise provided for, exercised by the judges and clerks of the late circuit courts of this territory, shall be vested in the judges of the county courts, within their respective counties, and wherever the words "circuit courts" shall occur in the acts of the last session of the Legislative Council, the county court shall be understood, and have jurisdiction.

GEO. MURRAY,

President of the Legislative Council.

Attested,

F. J. FATIO, Clerk.

Approved July 3d, 1823.

WM. P. DUVAL,

Governor of the Territory of Florida.

AN ACT,

To provide for the compensation of the clerks and messenger of the Legislative Council.

Be it enacted by the Governor and Legislative Council of the Territory of Florida, That the following allowances be given in full compensation for the services of the persons hereinafter mentioned.

To Francis J. Fatio; chief clerk of the Legislative Council, from the 24th day of May, the sum of two hundred and ten dollars. Francis J. Fatio

To Thomas H. Penn, engrossing clerk, from the 24th day of May, one hundred and forty eight dollars. Thos. H. Penn

To John H. Lawrence engrossing clerk from the 24th day of May, the sum of one hundred and twenty six dollars. J. H. Lawrence

To Benjamin A. Putnam, engrossing clerk, from the 12th day of June, the sum of ninety two dollars. Benj. A. Putnam

To Lewis Huguin enrolling clerk, from the 29th June, the sum of twenty four dollars. Lewis Huguin

To John Kerr, enrolling clerk from the 29th June, the sum of five dollars. John Kerr

To Peter Ménard, Sergeant at Arms, from the 24th day of May, the sum of eighty four dollars. Peter Ménard

To John Low, messenger of the Council, from the 24th day of May, the sum of sixty three dollars. John Low

SEC. 2. *And be it further enacted,* That the Governor be and he is hereby authorised to cause to be audited, the accounts for stationary and other contingent expenses incurred for the use of the Legislative Council. Governor to audit accounts

GEO. MURRAY,

President of the Legislative Council.

Attested,
F. J. FATIO, Clerk.

(Approved July 4th 1823.)

WM. P. DUVAL,

Governor of the Territory of Florida.

AN ACT,

In addition to "an act authorising the appointment of Justices of the peace."

Be it enacted by the Governor and Legislative Council of the Territory of Florida, That when any justice

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Justices may
take oath of of-
fice before a
commissioner
appointed by
the Governor

of the peace shall be appointed by the Governor, and there shall be no judge or justice of the peace convenient, before whom he can take the oath prescribed by law, it shall be lawful for such justice of the peace to take the oath before any person named by the Governor.

GEO. MURRAY,

President of the Legislative Council.

Attested,

F. J. FATIO, Clerk,

(Approved July 3d, 1823,)

WM. P. DUVAL,

Governor of the Territory of Florida:

AN ACT

To provide for levying a Poll Tax.

Poll tax to be levied on free white males and slaves

Be it enacted by the Governor and Legislative Council of the Territory of Florida, That from and after the first day of January, which will be in the year one thousand eight hundred and twenty-four, there shall be levied and collected yearly and every year, a tax of twenty five cents upon the head of each and every free male inhabitant of this territory, who shall be of the age of twenty one years and upwards, and upon each and every able bodied slave above the age of seventeen years, and not exceeding the age of fifty years, to be paid by the owner of such slave or slaves.

Persons liable to taxation to make returns to the clerk of the county

SEC 2. Be it further enacted, That it shall be the duty of every free male inhabitant of this territory who shall be subject to taxation under the provisions of this act, on or before the third Monday of February in each and every year, to enter his name with the clerk of the county in which such inhabitant shall reside; and every person who shall be owner of any slave or slaves, shall, on the same day, deliver to the said clerk a schedule containing an account of the number of slaves, which he, she or they may own, and which, by this law are subject to taxation; and it shall be the duty of said clerk to keep a list of all such persons, with the number of slaves owned by such persons set opposite to their names; and the said clerk shall annually, on or before the first day of March, in every year, deliver to

the sheriff of his county a copy of such list and account.

SEC. 3. *Be it further enacted*, That it shall be the duty of the several sheriffs of this territory, on or before the first day of June in every year, to give public notice for the period of thirty days, by advertisement, in the newspaper printed in his county, or if no newspaper be published in his county, then in the newspaper published nearest to his county, of the time and place at which he will attend to receive from all persons who may be included in the list delivered to him by the clerk, the sums of money which by such list may appear to be due from such person or persons; and if any person or persons shall refuse or neglect to pay such sum or sums of money, for the term of thirty days after the expiration of the time so appointed and notified by the said sheriff, it shall be the duty of said sheriff to distrain the goods and chattels of such defaulter, to an amount sufficient to pay such tax, together with the costs of such distress, and to expose the same for sale at public auction, after giving ten days notice of the time and place of such sale.

Sheriffs to be tax
collectors

SEC. 4. *Be it further enacted*, That it shall be the duty of the said sheriff, from time to time, as he shall collect such taxes, to pay the amount thereof to the secretary of this territory, taking his receipt therefor; and the said secretary shall receive and pay and account for the same, in the same manner, and shall give the like security as by the act of the Legislative Council, entitled "an act to raise a revenue in the territory" was provided in regard to the Treasurer of this territory; and the said secretary shall receive as a compensation for the services required by this act, the annual salary of one hundred and fifty dollars.

Secretary of the
Territory to act
as treasurer

SEC. 5. *Be it further enacted*, That the sheriffs shall receive for their services under and by virtue of this act, three per centum on all sums collected by them, and the clerks shall receive for their services under and by virtue of this act, two per centum upon the amount collected as aforesaid,

GEO. MURRAY,

President of the Legislative Council.

Attested,
F. J. PATIO, Clerk,

Approved July 4th, 1823.

WM. P. DUVAL,

Governor of the Territory of Florida.

AN ACT

To amend an act entitled "an act concerning Limitation of Actions."

Limitation of
book accounts

Be it enacted by the Governor and Legislative Council of the Territory of Florida, That all actions or suits, founded upon any account for goods, wares or merchandize sold and delivered, or for any article charged in any book account, shall be commenced and sued within two years next after the arising of the cause of such action or suit, or the delivery of such goods, wares and merchandize, and not after; except, that in the case of the death of such creditors or debtors, before the expiration of the said term of two years, the further time of two years from the death of such creditor or debtor shall be allowed, for the commencement of such action or suit.

Former provisions repealed

SEC. 2. *And be it further enacted,* That the fifth section of the act entitled "an act concerning limitation of actions" approved September 13th, 1822, be and the same is hereby repealed,

GEO. MURRAY,

President of the Legislative Council.

Attested,

F. J. FATIO, Clerk.

Rejected by the Governor and passed by the requisite majority of the council.

AN ACT,

To amend an act entitled "an act regulating civil proceedings."

Act entitled to
the first
in certain
cases

Be it enacted by the Governor and Legislative Council of the Territory of Florida, That in all suits which may be brought before any of the courts of this territory, where the process shall be returned executed sixty days before the court to which it is returnable, the plaintiff shall be entitled to a trial and judgment, unless good cause be shewn for a continuance; *Provided* the declaration in such cause be filed thirty days before said court.

SEC. 2. *Be it further enacted,* That the defendant shall file his plea or demurrer, to the plaintiffs declaration at least fifteen days previous to the first day of the term to which the process may be returnable, and if he

should fail to do so, the court in its discretion may give some reasonable time, during the same term for an imparlance, and if the issues of law and fact are not made up, the court shall award such judgment as may be conformable to law.

Time of filing
plea or demurrer

SEC. 3. *Be it further enacted*, That in all actions founded on any judgment, bond, bill of exchange, promissory note or writing obligatory for the payment of money, and in all other actions founded on contract, where the sum due shall be ascertained by the oath of the plaintiff or his agent or attorney, and in all actions of trover and detinue bail shall be demandable of course, but in all other actions bail shall not be required unless the plaintiff or his agent or attorney shall make oath that he verily believes that the defendant will remove himself or his effects beyond the jurisdiction of the court, before judgment can be obtained; and upon such affidavit any judicial officer in this territory may endorse upon the writ an order to the sheriff, to require bail, which orders shall also specify the sum in which such bail shall be bound.

Bail demandable
of course in cer-
tain cases

SEC. 4. *Be it further enacted*, That papers read in evidence in any cause which may be tried in any of the courts of this territory, may be carried from the bar by the jury to their room, by the consent of both parties.

Papers read in
evidence may be
taken by the ju-
ry, by consent

SEC. 5. *Be it further enacted*, That the fifth, sixteenth, twenty fourth, twenty fifth, twenty sixth, forty sixth, fifty fifth and sixty eighth sections of the act to which this is an amendment, shall be, and the same are hereby repealed.

Certain former
provisions re-
pealed

GEO. MURRAY,
President of the Legislative Council.

Attested,
F. J. FATIO, Clerk.

(Approved July 5th, 1823.)

WM. P. DUVAL,
Governor of the Territory of Florida¹

TO THE PRESIDENT

OF THE

UNITED STATES.

YOUR Memorialists constituting the Legislative Council of the Territory of Florida, beg leave to submit the views of your memorialists on the subjects of wrecking and fishing in this territory.

On the subject of wrecking, your memorialists would observe, that with a trifling exception, the immense quantity of goods and other property annually cast ashore on the coasts of this territory, is taken by British wrecking vessels, and carried away to the port of Nassau, in the island of New-Providence, and although the legitimate emoluments of such wrecks ought properly to be enjoyed by the government and people of the United States, yet so it is, that they are almost exclusively monopolized by the government and people of a foreign power.

Amongst the causes of this evil, your memorialists would mention, the great encouragement given to wreckers, by the Bahama Government, and the non-existence of any such encouragement in these United States. The encouragement to which your memorialists allude, is believed to consist in the facility and expedition with which the reward of a wrecker is determined, in the Bahama Islands; also in the reduction

of the usual duties and imposts on imported goods, and in allowing for the benefit of the wreckers, such goods as may not be claimed by the proper owners within a limited time.

Your memorialists submit that a policy the reverse of this would appear to prevail in the United States.—The wrecker instead of a prompt and final adjustment of his claim for salvage, must pursue a tedious and expensive process in a court of admiralty; instead of an abatement of duties, he has to pay to the full extent, all the duties imposed upon goods imported under different circumstances; and instead of receiving such portion of the goods as may have no other claimants, that portion is placed beyond his reach.

And your memorialists would further submit as another cause of the evil alluded to, the non-existence of any laws to inhibit or restrain foreign vessels from occupying the wrecking ground, to the prejudice of American vessels.

Your memorialists in legislating on this subject, if they had the power, would deem it inexpedient to enact a law which might operate as an absolute and immediate inhibition of foreign wrecking vessels, from our shores; for such inhibition might operate as a temporary injury to commerce, by depriving vessels in distress, of the means of assistance, until the wrecking ground could be supplied by the vessels and enterprising seamen of the United States. Sound policy would therefore appear to dictate the assignment of a specific period after which foreign vessels may not be engaged in wrecking on our shores, and previously to which, suitable encouragement may be given to the merchants and seamen of the United States, to occupy the wrecking ground. In pursuance of this policy your memorialists have enacted a law to provide for the prompt adjustment of salvage on wrecked property, arriving in this territory, and also providing that wreckers shall be entitled to the greater part of such wrecked property, as after a year and a day may not be claimed by any other owner.

Your memorialists in submitting this policy, beg leave to suggest the expediency of a law to release from the payment of duties or a considerable portion thereof, such property as may be wrecked on the coast of Florida. Your memorialists believe that such a law would encourage the merchants and seamen of the United States to occupy the wrecking ground, and would operate in opening a source of revenue, when at

any future period Congress should see fit to exact it.—
 the period to be assigned for the exclusion of foreign vessels from the wrecking ground, your memorialists conceive it ought to be, after the expiration of nine months, such an appointment of time, however, would seem to be nugatory without the essential prerequisite of some provision for the encouragement of American wreckers, by a reduction of duties or otherwise.

On the subject of fishing, your memorialists submit that as the great demand for fish at Havana is almost entirely supplied from the shore and inlets of this territory, and by Spanish vessels, and as American vessels are excluded from this employment, whether this be not a fit subject for negotiation with the Spanish Government, and whether a demand ought not to be made of that government that American vessels shall be admitted to some participation in such supply of the Havana market.

And your memorialists finally submit that these subjects possess an interest of such vital importance to the welfare of the people of this territory, that your memorialists deem it a duty to urge their consideration on Congress, at as early a period as practicable.

Resolved by the Legislative Council of the Territory of Florida, That the Governor be requested to forward a copy of the foregoing memorial to the President of the United States, and that another copy be delivered to the delegate who shall be elected to represent this Territory in Congress, that he may have the subject in consideration.

St. Augustine, June 19th 1823.

SIR—I have been directed by the Legislative Council to transmit you a copy of the following resolutions: passed the 11th instant.

“Whereas many inconveniencies and embarrassments may arise from the necessary delay in giving publicity to the acts of the Legislative Council; with a view to obviate as far as practicable those inconveniencies and embarrassments. *Therefore, be it Resolved by the Legislative Council,* That the Governor be requested to direct a manuscript copy of all the acts of the present session of the Council aforesaid, to be

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made out and forwarded to the clerk of the several courts of the District of West Florida, and one to the clerk of the county of Duval."

I have the honor to be,
Very respectfully,

F. J. FATIO, C. L. C.

His Excellency,

WM. P. DUVAL,
Governor of the Territory of Florida.

Legislative Council, June, 20th, 1823.

Resolved, That the Governor and Secretary be requested to audit the accounts for services rendered to the territory, under and by virtue of the act to regulate the counties, and establish inferior courts in the territory of Florida, and that when the amount thereof, shall be fully ascertained, that the delegate to Congress from this Territory, be furnished therewith, in order to the procuring a settlement thereof by the government of the United States.

GEO. MURRAY,
President of the Legislative Council,

Attested,
F. J. FATIO, Clerk.

Legislative Council, June 30th, 1823.

Resolved, That the Governor be requested to procure in such manner as he may deem proper, information as to the quantity and value of fish taken and carried away annually from the shores and inlets of this Territory, and of the number and national character of the fishermen engaged therein, and the ports or markets chiefly supplied with the same, and that he be requested to furnish the next Legislative Council with such information.

GEO. MURRAY,
President of the Legislative Council.

Attested,
F. J. FATIO, Clerk.

Legislative Council, July 5th, 1823.

Resolved, That in addition to the former allowance made to the clerks and officers of the Legislative Council, the Governor be requested to audit the accounts of Francis J. Fatio, chief clerk, from the fifth day of July to the twelfth day of July inclusive, at the rate of five dollars per day, and the account of Lewis Huguin for services on the fifth day of July, four dollars, Peter Menard, Sergeant at Arms, for services on the same day, two dollars; and John Lowe, messenger, for services on same day, one dollar and fifty cents.

GEO. MURRAY,

President of the Legislative Council.

Attested,

F. J. FATIO, Clerk.

Legislative Council, July 5th, 1823.

WHEREAS reports have gone abroad injurious to the public character of His Excellency Governor Duval, and as the said reports in the opinion of the Legislative Council, are totally unfounded, *Be it therefore Resolved by the Legislative Council of Florida*, That the conduct of His Excellency has met their warmest approbation, and that they express their thanks to him for his uniform, courteous and conciliatory demeanor during the present session of the Council.

GEO. MURRAY,

President of the Legislative Council

Attested,

F. J. FATIO, Clerk.

BY CONGRESS:

AN ACT,

To amend "An Act for the establishment of a Territorial Government in Florida."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all that Territory, ceded by Spain to the United States, known by the name of East and West Florida, shall constitute a territory of the United States, under the name of the Territory of Florida, the government whereof shall be organized and administered as follows:

SEC. 2. *And be it further enacted,* That the executive power shall be vested in a Governor, who shall reside in the said territory, and hold his office during the term of three years, unless sooner removed by the President of the United States. He shall be commander in chief of the militia of the said territory, and be, ex-officio, superintendent of Indian affairs, and shall have power to grant pardons for offenses [offences] against the said territory, and reprieves for those against the United States, until the decision of the President of the United States thereon shall be made known; and to appoint and commission, by and with the consent of the Legislative Council, all officers, civil and of the militia, whose appointments are not herein otherwise provided for, and which shall be established by law.—

He shall take care that the laws be faithfully executed,

SEC. 3. *And be it further enacted*, That a Secretary of the territory shall be appointed, who shall hold his office during the term of four years, unless sooner removed by the President of the United States; whose duty it shall be, under the direction of the Governor, to record and preserve all the papers and proceedings of the executive, and all the acts of the Governor and Legislative Council; and transmit authentic copies of the proceedings of the Governor, in his Executive department, every six months, to the President of the United States.

SEC. 4. *And be it further enacted*, That in case of the death, removal, resignation, or necessary absence of the Governor of the said territory, the Secretary thereof shall be, and he is hereby authorized and required, to execute all the powers, and perform all the duties of the Governor, during the vacancy occasioned by the removal, resignation, or necessary absence of the said Governor; who shall, in no case, leave the said territory without permission first had of the President of the United States.

SEC. 5. *And be it further enacted*, That the legislative powers shall be vested in the Governor, and in thirteen fit and discreet persons of the territory, nine of whom shall constitute a quorum to do business, to be called the Legislative Council; who shall be appointed annually, by the President of the United States, by and with the advice and consent of the Senate, from among the citizens of the United States, or from among the inhabitants of the territory, resident there at the cession; but no person shall be eligible as a member of the said Legislative Council, who shall not have resided in the said territory at least six months previous to his appointment. The Governor and Legislative Council shall have legislative powers over all rightful subjects of legislation; but no law shall be valid which is inconsistent with the Constitution and laws of the United States; or which shall lay any person under restraint, burthen, or disability, on account of his religious opinions, professions or worship. The Governor shall publish, throughout the said territory, all the laws which shall be made; and shall, on or before the first of December in each year, report the same to the President of the United States, to be laid before Congress; which, if disapproved of by Congress, shall thenceforth be of no force. The Governor and Legislative Council shall have no power over the primary

disposal of the soil, nor to tax the lands of the United States, nor to interfere with the claims to lands within the said territory. The Legislative Council shall hold a session once in each year, commencing on the first Monday in May, in each and every year, but shall not continue longer in session than four weeks, after the first session, which shall not continue longer than eight weeks; to be held in the city of St. Augustine, or at such other place or places, as the Governor and Council may from time to time direct. It shall be the duty of the Governor to obtain all the information in his power in relation to the customs, habits, and dispositions of the inhabitants of the said territory, and communicate the same, from time to time, to the President of the United States.

SEC. 6. *And be it further enacted,* That every bill which shall have passed the Legislative Council, shall, before it become a law, be presented to the Governor. If he approve of it, he shall sign it; and if not, he shall return it with his objections at large on their Journal, and proceed to reconsider it. If, after such reconsideration, two thirds of the members of the Legislative Council agree to pass the bill, it shall become a law: and the names of the persons voting for or against the bill shall be entered on the journal: *Provided nevertheless,* That all bills to tax the inhabitants of the said territory, or their property, shall, before they become laws, receive the sanction of Congress; except when the said bills shall authorize county, city and town officers to collect taxes for the use and benefit of their respective counties, cities and towns: and for no other purposes.

SEC. 7. *And be it further enacted,* That the judicial power shall be vested in two Superior Courts, and in such Inferior Courts, and Justices of the Peace, as the Legislative Council of the territory may from time to time establish. There shall be a superior court for that part of the territory known as East Florida, to consist of one judge; he shall hold his court on the first Mondays in May and November in each year, at St. Augustine, and at such other times and places as the Legislative Council shall direct. There shall be a Superior Court for that part of the territory known as West Florida, to consist of one judge: he shall hold a court at Pensacola on the first Mondays in May and November, in each year, and at such other times and places as the Legislative Council shall direct. Within its limits herein described, each court shall have ju-

jurisdiction in all criminal cases; and exclusive jurisdiction in all capital offences; and original jurisdiction in all civil cases, of the value of one hundred dollars, arising under, and cognizable by the laws of the territory, now in force therein, or which may, at any time, be enacted by the Legislative Council thereof. Each judge shall appoint a clerk for his respective court, who shall reside, respectively, at St. Augustine and Pensacola, and they shall keep the records there. Each clerk shall receive for his services, in all cases arising under the territorial laws, such fees as shall be established by the Legislative Council. And the said judges may adjourn their respective courts to any other time or place whenever St. Augustine or Pensacola shall be infected with a malignant fever; and writs of error and appeal from the final decisions of the said superiour [superior] courts, authorised by this section of this act, shall be made to the Supreme Court of the United States, in the same manner, and under the same regulations, as from the Circuit Courts of the United States, where the amount in controversy [controversy,] to be ascertained by the oath or affirmation of either party, shall exceed one thousand dollars.

SEC. 8. *And be it further enacted*, That each of the said Superiour [Superior] Courts shall, moreover, have and exercise the same jurisdiction within its limits, in all cases arising under the laws and constitution of the United States, which, by an act to establish the judicial courts of the United States, approved the twenty-fourth of September, one thousand seven hundred and eighty-nine, and "an act in addition to the act, entitled 'an act to establish the Judicial Courts of the United States,'" approved the second of March, one thousand seven hundred and ninety-three, was vested in the court of Kentucky district. And writs of error and appeal from the decisions in the said superiour [superior] courts, authorized by this section of this act, shall be made to the supreme court of the United States, in the same cases, and under the same regulations, as from the Circuit Courts of the United States. The clerks, respectively, shall keep the records at the places where the courts are held, and shall receive, in all cases arising under the laws and constitution of the United States, the same fees which the clerk of the Kentucky district received for similar services, whilst that court exercised the powers of the circuit and district courts.

SEC. 9. *And be it further enacted*, That there shall be appointed two persons, learned in the law, to act, as

Attorneys of the United States, as well as for the territory, one for that part of the territory known as East Florida, the other for that part of the territory known as West Florida; to each of whom, in addition to their stated fees, in civil cases, shall be paid, as a full compensation for all extra services, annually, the sum of two hundred dollars. There shall also be appointed two Marshalls, [Marshals] one for each of the said Superiour [Superior] Courts, who shall, each, perform the same duties, be subject to the same regulations and penalties, and be entitled to the same fees, to which Marshalls [Marshals] in other districts are entitled for similar services; and shall, in addition, be paid the sum of two hundred dollars, annually, as a compensation for extra services, and shall also be subject to such regulations and penalties as the Legislative Council shall impose, while acting under, and in virtue of the territorial laws.

SEC. 10. *And be it further enacted*, That the Governor, Secretary, Judges of the Superiour [Superior] Courts, District Attorneys, Marshalls, [Marshals] and all general officers of the militia, shall be appointed by the President of the United States, by and with the advice and consent of the Senate. All judicial officers shall hold their offices for the term of four years and no longer. The Governor, Secretary, Judges, Members of the Legislative Council, Justices of the Peace, and all other officers, civil and of the militia, before they enter upon the duties of their respective offices, shall take an oath or affirmation to support the Constitution of the United States, and for the faithful discharge of the duties of their office, before a Judge of the Supreme or District Court of the United States, or before a Judge or Justice of the Peace of the Territory. The Governor shall receive an annual salary of two thousand five hundred dollars; the Secretary, of one thousand five hundred; and the Judges of fifteen hundred each; to be paid quarterly, out of the Treasury of the United States. The members of the Legislative Council shall receive three dollars each per day, during their attendance in Council, and three dollars for every twenty miles in going to, and returning from, any meeting of the Legislative Council, once in each session, and no more. The members of the Legislative Council shall be privileged from arrest, except in cases of treason, felony, or breach of the peace, during their going to, attendance at, and returning from, each session of said Council.

SEC. 11. *And be it further enacted*, That the laws of the United States relating to the revenue and its collection, subject to the modification stipulated by the fifteenth article of the treaty of the twenty-second of February, one thousand eight hundred and nineteen, in favor of Spanish vessels and their cargoes, and all other public acts of the United States, not inconsistent or repugnant to the provisions of this act, now in force, or which may hereafter be in force, shall extend to, and have full force and effect in the territory aforesaid.

SEC. 12. *And be it further enacted*, That, to the end that the inhabitants may be protected in their liberty, property and religion, no law shall ever be valid which shall impair, or in any wise restrain, the freedom of religious opinions, professions and worship. They shall be entitled to the benefit of the writ of Habeas Corpus. They shall be bailable in all cases, except for capital offences, where the proof is evident or the presumption great; all fines shall be moderate, and proportionate to the offence; and excessive bail shall not be required, nor cruel or unusual [unusual] punishments inflicted; no ex post facto law, or law impairing the obligation of contracts, shall ever be passed; nor shall private property be taken for public uses without just compensation.

SEC. 13. *And be it further enacted*, That all free male white persons, of full age, who are house keeper, and who shall have resided one year in the said territory, shall be qualified to act as grand and petit jurors in the courts of the said territory, and they shall, until the Legislature thereof shall otherwise direct, be selected in such manner as the judges of the said courts shall respectively prescribe, so as to be most conducive to an impartial trial, and be least burthensome to the inhabitants of the said territory.

SEC. 14. *And be it further enacted*, That it shall not be lawful for any person or persons to import, or bring into the said territory, from any port or place without the limits of the United States, or cause or procure to be so imported or brought, or knowingly to aid or assist in so importing or bringing, any slave or slaves; and any person so offending, and being thereof convicted, before any court within the said territory, having competent jurisdiction, shall forfeit and pay, for each and every slave, so imported or brought, the sum of three hundred dollars; one moiety for the use of the United States, and the other moiety for the use of the person or persons who shall sue for the same; and e-

very slave, so imported or brought, shall, thereupon, become entitled to, and receive, his or her freedom.

SEC. 15. *And be it further enacted*, That the citizens of the said territory shall be entitled to one Delegate to Congress, for the said territory, who shall possess the same powers heretofore granted to the Delegates from the other territories of the United States; *Provided*, That no person shall be eligible for that office who shall not have resided at least twelve months in the said territory. The Delegate shall be elected by such description of persons, at such times, and under such regulations, as the Governor and Legislative Council may, from time to time, ordain and direct, soldiers of the United States excepted, who shall, under no circumstances be qualified to vote.

SEC. 16. *And be it further enacted*, That an act, entitled "an act for the establishment of a Territorial Government in Florida," be, and the same is hereby repealed, so far as the same is inconsistent with the provisions of this act; and that the proceedings of the last session of the Legislative Council of Florida, be, and the same are hereby confirmed, to remain in full force and effect until the end of the next session of said Council, unless sooner altered, modified, or repealed, with the exception of all revenue laws imposing taxes on the inhabitants or their property, and the law authorising the Governor to borrow five thousand dollars on the credit of the said territory, and the law establishing county courts, which are hereby declared null and void; *Provided*, That no loan of money already made or obtained, under said law, shall be effected [affected] by this act, and that the act approved the second of September, one thousand eight hundred and twenty-two, by the Governor, repealing all the laws and ordinances in force in the said territory, shall be, and is hereby declared to have effect on the day of its passage by the Legislative Council, and not of its approval by the Governor.

[Approved 3d March, 1823.]

AN ACT

Amending, and supplementary to, the "Act for ascertaining claims and titles to land in the Territory of Florida," and to provide for the survey and disposal of the public lands in Florida.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress as-

sembled, That the powers of the board of commissioners heretofore appointed, for ascertaining claims and titles to lands in the territory of Florida, shall be confined, exclusively, to the examination of titles and claims in that portion of said territory, heretofore known as West Florida; and that, for ascertaining titles and claims in East Florida, the President is hereby authorized, in the recess of the Senate, to appoint three commissioners, which appointments shall be of force until the end of the next session of Congress thereafter, who may appoint their secretary, and who, with their secretary, shall, within the District of East Florida, possess all the powers given by, perform all the duties [duties] required, and shall, in all respects, be subject to, the provisions and restrictions of the act of the eighth of May, one thousand eight hundred and twenty-two, entitled "an act for ascertaining claims and titles to lands in the territory of Florida," except [except] so far as the same is altered or changed by the provisions of this act; which board of commissioners, heretofore appointed, with that hereafter appointed, shall hold their sessions, severally, at the place within their respective districts, heretofore designated by law; but may adjourn to some other convenient place within their district, and may continue their sessions until the second Monday in February next, when they shall make a return of their proceedings to the Secretary of the Treasury, to be laid before Congress.

SEC. 2. *And be it further enacted*, That in the examination of titles to land before either of said boards of commissioners, the claimant or claimants shall not be required to produce in evidence the deraignment of title from the original grantee or patentee, but the commissioners shall confirm every claim in favour of actual settlers at the time of session (cession) of the said territory to the United States, where the quantity claimed does not exceed three thousand five hundred acres, where such deraignment cannot be obtained, the validity of which has been recognized by the Spanish government, and where the claimant or claimants shall produce satisfactory evidence of his, her, or their, right to the land claimed: And said commissioners shall have the power, any law to the contrary notwithstanding, of deciding on the validity of all claims derived from the Spanish government in favour of actual settlers, where the quantity claimed does not exceed three thousand five hundred acres.

SEC. 3. *And be it further enacted*, That each of the

commissioners heretofore appointed, who has performed, and shall hereafter perform, the duties assigned him, shall receive compensation in proportion to that heretofore allowed him. And each of the commissioners hereafter appointed for East Florida, who shall actually perform the duties assigned him, shall receive the sum of two thousand dollars, as a full compensation, payable quarterly, from the Treasury of the United States.

SEC. 4. *And be it further enacted*, That it shall be the duty of the District Attorneys for said Districts respectively, whenever required to do so by the Commissioners within his district, to attend them for the purpose of arguing and explaining any points of law that may be deemed necessary to be examined; and said Attorney shall be entitled to the same compensation therefor as when attending on the district court of said territory.

SEC. 5. *And be it further enacted*, That all claims not filed with the Commissioners of the district, where the land claimed is situated, in the manner prescribed by the act to which this is an amendment, on or before the first day of December next; shall be held to be void and of none effect.

SEC. 6. *And be it further enacted*, That it shall be the duty of the Marshall [Marshal] to execute and make return of all process which may be issued by the said Commissioners, or the Commissioners may, where they deem it necessary, authorize and empower any other person to execute and return said process.

SEC. 7. *And be it further enacted*, That so soon as the Commissioners shall have decided and reported on the private claims in said Territory of Florida, a surveyor shall be appointed for the Territory of Florida, who shall keep his office at such place, within said territory, as the President of the United States shall designate; and shall receive the sum of two thousand dollars, payable quarterly, at the Treasury of the United States,

SEC. 8. *And be it further enacted*, That, for the disposal of the lands of the United States, lying in the District of East Florida, a Land Office shall be established and kept at such place, within said district, as the President of the United States shall direct; and that, for the disposal of the lands of the United States lying in the District of West Florida, a Land Office shall be established at such place, in said district, as the President of the United States shall direct.

SEC. 9. *And be it further enacted*, That, so soon as, in the opinion of the President of the United States, there shall be a sufficient quantity of the public lands surveyed, within either of the Districts of East or West Florida, to authorize the opening of one or both of the Land Offices aforesaid, he shall cause the same to be opened, and shall proceed, from time to time, to appoint, with the advice and consent of the Senate, for each of the said offices, a Register and Receiver of the Public Moneys, who shall give security, in the same sums, and in the same manner, and whose compensation, emoluments, duties, and authority, shall, in every respect, be the same, in relation to the lands to be disposed of at their offices, as are or may be provided by law in relation to the Registers and Receivers of Public Moneys, in the several land offices established for the disposal of the public lands of the United States.

SEC. 10. *And be it further enacted*, That whenever a Land Office shall have been established in either of the Districts aforesaid, and a Register and Receiver of Public Moneys appointed for the same, the President of the United States shall be, and he is hereby authorized to direct so much of the public lands, lying in such district, as shall have been surveyed according to law, to be offered for sale, in the same manner, and with the same reservations and exceptions, and on the same terms and conditions, in every respect, as have been, or may hereafter be, provided for the sale of the public lands in the United States.

SEC. 11. *And be it further enacted*, That an entire township, in each of the Districts of East and West Florida, shall be reserved from sale, for the use of a seminary of learning, to be located by the Secretary of the treasury.

SEC. 12. *And be it further enacted*, That all the navigable rivers and waters in the Districts of East and West Florida, shall be, and forever remain, public highways.

SEC. 13. *And be it further enacted*, That so much of the act, approved the eighth day of May, one thousand eight hundred and twenty-two, entitled "an act for ascertaining claims and titles to land in the Territory of Florida," as is inconsistent with the provisions of this act, be and the same is hereby repealed; and so much thereof as provides for the appointment of a Surveyor General, and allows him to charge fees, is hereby repealed.

[Approved 3d March 1823.]

AN ACT

to carry into effect the ninth article of the treaty concluded between the United States and Spain, the twenty second day of February, one thousand eight hundred and nineteen.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the judges of the Superior Courts established at St. Augustine and Pensacola, in the Territory of Florida, respectively, shall be, and they are hereby authorized and directed to receive and adjust all claims arising within their respective jurisdictions, of the inhabitants of said territory, or their representatives, agreeably to the provisions of the ninth article of the treaty with Spain, by which the said territory was ceded to the United States.

SEC. 2. *And be it further enacted,* That in all cases in which said Judges shall decide, in favor of the claimants, the decisions, with the evidence on which they are founded, shall be, by the said judges reported to the Secretary of the Treasury, who, on being satisfied that the same is just and equitable, within the provisions of the said treaty, shall pay the amount thereof to the person or persons in whose favour the same is adjudged, out of any money in the Treasury not otherwise appropriated.

[*Approved 3d March, 1823.*]

